

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

25 CFR Part 169
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DR.5B711.IA000814]
RIN 1076-AF20

Proposed Rule:
Rights-of-Way on Indian Land

TRANSCRIPT OF
PUBLIC HEARING

Taken at:
Bismarck Civic Center
315 South 5th Street
Prairie Rose Room 101
Bismarck, North Dakota
August 5, 2014

BEFORE MS. ELIZABETH APPEL
-- HEARING OFFICER --

C O N T E N T S

1
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7
8
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10
11
12
13
14
15
16
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18
19
20
21
22
23
24
25

STATEMENTS BY:	PAGE(S)
-----	-----
DR. DAVIS	23, 73, 128
MS. LITTLE OWL	26, 27, 82, 88, 91, 121, 122, 126, 144, 149, 156
MR. HOOD, JR.	29, 32, 36
MS. MANDAN	31, 57
MS. JULETTA BIRDBEAR	37, 41, 70, 88, 90, 113, 114, 151
MS. PACKUHEA	39, 110, 155
MS. THEODORA BIRDBEAR	39, 74, 111, 114 115, 121, 122, 124, 126
MR. CODY HALL	77, 95
MR. BIRDBEAR	82, 103, 127, 137
MS. KARY	87
MR. VOCU	108
MR. WINTER	121, 122
MR. TEX HALL	131
MS. ROME LIGHT	136
MS. GUTIERREZ	140
MS. LINSETH	141
-----	-----
CERTIFICATE OF NOTARY PUBLIC COURT REPORTER	157
-----	-----

1 MS. APPEL: Well, thank you, everyone,
2 for coming out this morning. My name is Liz
3 Appel. I work for the Office of Regulatory
4 Affairs, and I report to the Assistant Secretary
5 for Indian Affairs at the Department of the
6 Interior.

7 And with me, I have Jennifer Turner, who
8 is from the Office of the Solicitor, and Kayla
9 Danks, who is with the Bureau of Indian Affairs.

10 So in your handouts, you should have a
11 copy of the PowerPoint presentation and a copy of
12 the rule and fact sheet of sorts.

13 What I'm going to do, basically, is run
14 through the presentation and then open it up to
15 comments and questions.

16 This is a tribal consultation, so we ask
17 that tribal leaders and those here on behalf of
18 their tribes be permitted to speak first, and
19 others respect that. And I think that's it.

20 So let's get started. And we do have a
21 court reporter here, so rather than asking
22 questions throughout the presentation, if you'll
23 just allow me to get through the presentation, and
24 then afterward, when we open for comments and
25 questions, if you could come up on the microphone

1 and announce yourself and where you're from, and
2 that way, our court reporter can accurately
3 capture it.

4 So we are here to discuss a proposed
5 rule on Rights-of-Way on Indian Land. And --

6 MR. LA POINTE: Can I say something,
7 just real quick?

8 MS. APPEL: Sure.

9 MR. LA POINTE: My name is Tim LaPointe.
10 I'm the active Regional Director of the Bureau of
11 Indian Affairs, and I just wanted to let everyone
12 know, we do have some additional staff here: Jim
13 Geffre, Realty Officer; Rick Clifford; Carla
14 Clark; Jeff Hunt from OIE is here; and also, Tom
15 Wells from the Agency.

16 So I just want to make sure that
17 everybody knows that we have additional staff
18 here. Hopefully we can get -- if you have any
19 questions, we'll be able to answer those.

20 And I think we have a panel set up, too.
21 But I just want to let everybody know that we're
22 here -- we're here, too, so --

23 MS. APPEL: Thank you so much.

24 MR. LA POINTE: So if anyone has any
25 questions, please let us know. Thank you.

1 MS. APPEL: Thank you. Okay. So -- so,
2 this rule came about as part of an ongoing effort
3 to improve the department's management of trust
4 land. And back in 2011-2012, we updated the
5 leasing regulations that addressed residential,
6 business, and wind and solar leasing on Indian
7 land.

8 And when I say "Indian land," I mean
9 trust and restricted land that's held by the
10 United States in trust or restricted status for an
11 Indian tribe or individuals.

12 So on the leasing regulations, we had
13 tribal consultations, and we ultimately issued the
14 final regulations in December of 2012. So our
15 next step, having updated the leasing regulations,
16 was to attack the rights-of-way regulations.

17 So we pulled together a work group of
18 subject matter experts from the Bureau of Indian
19 Affairs and legal experts from the Office of the
20 Solicitor and drafted some revisions. Those were
21 circulated for comment among all the BIA realty
22 officers, and the proposed rule was published this
23 June.

24 So the current rights-of-way
25 regulations: They're at -- found at Part 169.

1 They were published back in 1968, and they've been
2 updated a couple of times since then, but no
3 updates have happened since 1980, so they are
4 somewhat outdated.

5 They rely on statutory authorities that
6 are specific to different types of
7 rights-of-way -- railroads being a main one -- and
8 they impose specific requirements depending upon
9 what type of right-of-way.

10 So the proposed regulations rely,
11 instead, on the general statutory authority, which
12 is at 25 USC § 323, that authorizes the Secretary
13 of the Interior to grant right-of-ways for all
14 purposes.

15 So the regulations, by relying on this
16 general authority rather than the specific
17 statutory authorities, is intended to simplify
18 matters.

19 And as far as our legal team has been
20 able to tell, there is no benefit lost by relying
21 on this general authority rather than the specific
22 authorities, but if anyone disagrees with that or
23 finds some benefit that's lost, please let us
24 know.

25 And saying that, actually, let me take a

1 step back: That these are proposed regulations.
2 We are out here today to get comments, and we
3 have -- we are taking comments in written form
4 until August 18th.

5 So this -- these regulations, though
6 they've been published, they've just been
7 published as proposed; they are not set in stone.
8 Our intention is to update the rights-of-way
9 regulations to make them more streamlined and make
10 them more workable.

11 So I just wanted to emphasize that these
12 are -- I'm going to go through and explain what
13 the proposed rule says, but -- but we are
14 certainly open to change, according to your
15 comments.

16 So getting back to the presentation: As
17 I said, we're attempting to streamline the
18 rights-of-way regulations. So we're taking a lot
19 of the approaches that were taken in the leasing
20 regulations that were taken to streamline those.

21 For example, the rights-of-way
22 regulations established timelines for BIA to
23 review right-of-way applications. It sets up the
24 processes for getting BIA approval of
25 rights-of-way more clearly.

1 It allows BIA disapproval only if
2 certain conditions are met, and it defers to
3 tribes on what compensation should be provided for
4 rights-of-way on tribal land.

5 So I'm going to run through the rule as,
6 basically, broken out into 6 different subparts.
7 So I'm going to run through the major changes in
8 each of those. And I may skim some, but if you
9 have questions, we can go back to it.

10 So Subpart A: Purpose, Definitions, and
11 General Provisions. We've added several
12 definitions to help clarify things. We try to
13 explain what the regulation applies to more
14 clearly. Basically, it applies to Indian land, as
15 I said.

16 We also set out what happens if a life
17 estate is on the land. And they're the same
18 general provisions that we have in the updated
19 leasing regulations that talk about when a
20 right-of-way is needed, when tribes may contract
21 or compact for the right-of-way functions, what
22 laws apply, what taxes apply, how BIA provides
23 notice of rights-of-way, and what decisions may be
24 appealed.

25 So for Obtaining a Right-of-Way, this

1 sets off the process for applying to get a
2 right-of-way on Indian land. A major change that
3 we're making in an effort to streamline is that,
4 under the proposed rule, there would be no BIA
5 approval required to survey the land when someone
6 is preparing an application for a right-of-way.

7 They currently should be getting BIA
8 approval to get onto to the land to survey it.
9 The proposed rule would eliminate that
10 requirement.

11 As far as the application for a
12 right-of-way, it sets out what must be included in
13 the application and includes all the things you
14 would expect: Legal description, a map.

15 We do add a requirement for a bond or an
16 alternative security instead of a deposit, and we
17 have -- we require a record of consent of the
18 Indian landowners, evaluation in certain
19 circumstances, and other documentation that's
20 currently required.

21 So consent requirements: Statutorily,
22 you -- if you're applying for a right-of-way on
23 Indian land, you must obtain the consent of the
24 landowners. For tribal land, the consent of the
25 tribe is required. For individually-owned land,

1 under the statute, a consent of the owners of a
2 majority interest in the land is required.

3 So there are also certain circumstances
4 in which BIA may grant a right-of-way without
5 consent. One of those is if the number of owners
6 of the land is so numerous that it would be
7 impracticable to obtain consent, and these other
8 conditions are met.

9 And in the regulation, we propose
10 defining "so numerous" to mean "50 or more, but
11 less than 100 owners, where no one owner holds an
12 interest greater than 10 percent," or, "100 or
13 more co-owners." And that comes from the April
14 law -- the American Indian Probate Reform Act. Is
15 that correct?

16 MS. TURNER: Yes.

17 MS. APPEL: Yes. The definition of
18 "highly fractionated."

19 So the bond or alternative security may
20 be in the form of CD, a letter of credit, Treasury
21 securities, surety bonds, assigned savings
22 account.

23 And that bond should cover the highest
24 annual rent, unless the right-of-way is for a
25 one-time payment; estimated damages from

1 constructing and permanent improvements to the
2 right-of-way; operation and maintenance charges if
3 it's located in an irrigation project; and
4 restoration and reclamation of the premises.

5 BIA may waive the requirement for a bond
6 or security for a tribal land if the tribe
7 determines that a waiver is in its best interest.

8 And then, for individually-owned land,
9 BIA may waive the requirement if the owners of the
10 majority interests request and BIA determines it's
11 in the owners' best interest.

12 For compensation, we're following the
13 model that we use in the updated leasing
14 regulations. So for tribal land, BIA is going to
15 deter -- defer to the tribe and whatever tribe the
16 thinks is the appropriate compensation.

17 For individually-owned land, market
18 value is required, unless the landowners waive and
19 BIA makes that best interest determination. An
20 evaluation is required, unless the landowners
21 waive or -- this is another another exception that
22 is new.

23 If the grantee is going to construct
24 infrastructure improvements that benefit the
25 landowners, and BIA determines that that is in the

1 landowners' best interest, then BIA may waive
2 their requirement for evaluation.

3 And the compensation, if it's a one-time
4 payment, then it's due within ten days of the
5 right-of-way grant. Otherwise, the grant must
6 specify when the payments are due.

7 Direct pay is available under certain
8 circumstances: If there's ten or fewer
9 landowners, and they all agree to direct pay, and
10 their trust accounts are unencumbered.

11 For reviews and adjustments on tribal
12 land, no review or adjustment of the compensation
13 is required unless the tribe wants to require it.

14 And for individually-owned land, it's
15 not required if the payment is a one-time lump
16 sum, if the right-of-way duration is for five
17 years or less, or if the grant provides for
18 automatic adjustments, or BIA determines it's in
19 the landowners' best interests.

20 So really, it's -- although it's written
21 as reviews and adjustments are required or not
22 required in certain circumstances, it's really
23 very limited circumstances where they are
24 required.

25 So for the process of obtaining a

1 right-of-way grant, once BIA receives the
2 application package, it determines if the package
3 is complete.

4 If it is -- once it's complete, then BIA
5 is going to send the applicant a letter
6 acknowledging the date of receipt, so there is a
7 definite start date for BIA's review time.

8 And then BIA has 60 days to review that
9 application and must issue a decision either
10 approving or disapproving the right-of-way within
11 that time.

12 So again, the 60-day clock only starts
13 once the package is complete. That means any
14 environmental studies that are needed must also be
15 in for the BIA to start its review. And if BIA
16 misses its deadline, that 60-day deadline, then
17 the parties can file a Notice to Compel Action.

18 So BIA approval: As I mentioned,
19 there's limited grounds for disapproval. And
20 basically, the BIA can only disapprove a
21 right-of-way grant if the required consents
22 haven't been obtained, if the regulations weren't
23 followed, or if there's some compelling reason to
24 withhold approval.

25 And BIA can grant -- has the discretion

1 to grant one right-of-way for all tracts that are
2 traversed by right-of-way, or the BIA may issue
3 separate grants for each of the tracts. So
4 there's some flexibility there.

5 The grant is going to incorporate any
6 restrictions or conditions that the landowner
7 consent has, and there's a list of restrictions
8 and conditions set out in the regulations that you
9 can read through, and the grant has to incorporate
10 or attach the maps of definite location.

11 So there's often questions about whether
12 a right-of-way that was granted for one purpose
13 can be used for another purpose, and the proposed
14 rule sets out that a new right-of-way has to be
15 obtained if the original grant doesn't specify the
16 new use, or if the use is not within the same
17 scope of use that the original grant specifies.

18 And that is a little bit -- there's a
19 little flexibility in there about -- there's some
20 question about whether it's in the same scope of
21 use, and that often ends up being a legal
22 determination.

23 And BIA will grant a new right-of-way if
24 the new right-of-way doesn't interfere with the
25 use or purpose of the existing right-of-way, and

1 the existing right-of-way grant team must consent
2 to that new right-of-way.

3 So Subpart C addresses right-of-way
4 terms, renewals, amendments. The right -- the
5 term of the right-of-way has to be stated in the
6 right-of-way grant. BIA is going to defer to
7 whatever the tribe thinks is an appropriate term.

8 For individually-owned land, the term
9 has to be reasonable, and the proposed rule sets
10 out guidelines for what appropriate terms may be,
11 depending on what type of right-of-way it is. And
12 we're very open to suggestions and comments if any
13 of those terms seem inappropriate for the type of
14 right-of-way.

15 BIA will renew a right-of-way if the
16 original right-of-way allows for the renewal and
17 specifies the compensation, as opposed to
18 requiring a new right-of-way.

19 And there's no change in the size, type,
20 or location of the right-of-way, and the
21 landowners' consent is required, unless the
22 original right-of-way allows for renewal without
23 the landowner consent. And if there is going to
24 be a change in the size, type, location, or
25 duration of the right-of-way, then the grantee has

1 to get a new right-of-way.

2 So the proposed rule also sets out the
3 processes for amendments, assignments, and
4 mortgages, and imposes a timeline on BIA to
5 approve any application for amendment, assignment,
6 or mortgage within 30 days.

7 Again, the clock starts once the BIA
8 receives a complete application package, and BIA
9 will send a letter acknowledging the date of
10 receipt so everyone knows when that time starts.

11 BIA approval is required for an
12 amendment for a change to any right-of-way
13 provision or to accommodate a change in location
14 of permanent improvements to land that was
15 previously unimproved within the right-of-way
16 corridor.

17 If the amendment is just to correct a
18 legal description or some other technical
19 correction, then BIA approval is not required.
20 Landowner consent is required for amendments and,
21 again, there's only a limited -- limited
22 circumstances in which BIA may disapprove a
23 request for amendment.

24 BIA approval is required for assignments
25 unless the original right-of-way allows for

1 assignments without approval and the parties
2 provide BIA with a copy of the assignment, so BIA
3 knows who the grantee is at all times.

4 And landowner consent is required for
5 assignments. And there, again, are limited
6 grounds on which BIA may disapprove an assignment.

7 BIA approval is required for mortgages
8 of right-of-ways, and landowner consent is
9 required. And there is, again, limited grounds
10 for BIA disapproval.

11 So effectiveness of the right-of-way:
12 The right-of-way documents are effective upon BIA
13 approval, even if an appeal under the
14 administrative provisions for appeal is filed.

15 BIA will record the right-of-way
16 documents with the Land, Title, and Records Office
17 immediately following approval. If no BIA
18 approval is required, then the grantee still has
19 to provide BIA with a copy for recording so that
20 the LTRO records are up-to-date.

21 And the tribe must record a grant on
22 tribal land for a tribal utility that is not a
23 separate legal entity because no BIA approval
24 would be required there, and any grant on tribal
25 land under a special act of Congress that allows

1 grants of right-of-way without BIA approval.

2 For compliance and enforcement, BIA may
3 investigate compliance with the right-of-way --
4 oh, that should say, "and may enter the premises."
5 That's a typo; it shouldn't say "leased" -- to
6 ensure compliance at any reasonable time upon
7 reasonable notice and consistent with the notice
8 requirements in the right-of-way documents.

9 And if the landowner notifies BIA that
10 there is a violation that's occurring in that
11 right-of-way corridor, then BIA will promptly
12 initiate an investigation.

13 And the proposed rule allows for the
14 landowners and the grantee to develop negotiated
15 remedies in case of any violation. Those
16 negotiated remedies may apply in addition to or
17 instead of the cancellation remedy that is
18 available to BIA.

19 And the right-of-way grant may provide
20 that the tribe will address violations and may
21 specify how disputes will be resolved. BIA is not
22 bound by decisions made in those forums but is --
23 will defer to any ongoing actions or proceedings,
24 for example, in tribal court.

25 So the proposed rule sets out what the

1 process is for issuing notices of violation if
2 there's a violation other than nonpayment. And,
3 basically, it's a requirement for the grantee to
4 address the violation within ten business days.

5 Again, if the -- there's the process for
6 violation for a failure to pay rent or
7 compensation as required by the the grant.

8 And for all of these notices of
9 violation, BIA will send a copy to the tribe, if
10 it's tribal land, and will provide constructive
11 notice to Indian landowners if it's on
12 individually-owned land so that, at all times, the
13 landowners are kept in the loop on what's
14 happening.

15 If the grantee does not cure a violation
16 or provide the payment that's required, then BIA
17 is going to consult with the tribe, if it's tribal
18 land.

19 And if it's feasible to consult with the
20 Indian landowners, depending on how many there are
21 for individually-owned land, then BIA will consult
22 with them.

23 And BIA will, together with the
24 landowners, determine what the next step will be:
25 Whether to cancel the right-of-way grant, whether

1 to use any other remedies, or whether to get the
2 grantee additional time to cure the violation.

3 And following this consultation with the
4 landowners, BIA may take action and, basically,
5 can cancel the grant without any further notice at
6 that point to the grantee and may invoke other
7 remedies to cancel.

8 The BIA will send a cancellation letter
9 within five business days of the decision to
10 cancel and, again, will send a copy of the letter
11 to the landowners.

12 The cancellation letter has to set out
13 certain things about the grounds for cancellation
14 and the right to administratively appeal, and will
15 order the grantee to vacate within 31 days if
16 there's no appeal filed.

17 The cancellation is effective after that
18 31 days, or 41 days from the date BIA mailed the
19 letter, whichever is earlier.

20 The proposed rule also sets out
21 cancellation for abandonment or non-use, and those
22 are separately defined.

23 "Abandonment" is defined as when the
24 grantee affirmatively relinquishes the
25 right-of-way. So they say that they don't want

1 the right-of-way anymore.

2 Non-use is if the grantee, for two
3 years, doesn't use the right-of-way for the
4 purpose for which it was granted.

5 And finally, Service Line Agreements:
6 Service lines are defined as utility lines that
7 come from a main line, and it's intended to supply
8 owners or occupants with telephone, water,
9 electricity, or other home utility services.

10 The proposed rule doesn't have a
11 capacity limitation in there, as opposed to how
12 the rule is currently written.

13 So the proposed rule does not require a
14 right-of-way grant for service lines, but it does
15 establish that service line agreements should
16 address some factors like mitigation and
17 restoration, and that the agreement should be
18 signed by all the landowners.

19 There's no valuation required, but the
20 parties should file a copy of the agreement and
21 the plat with BIA within 30 days after they sign
22 the service line agreement, and BIA will record
23 that in the LTRO so that it's aware of the land
24 being subject to the agreement.

25 Comments on the proposed rule are due

1 August 18th. We have already had a couple
2 requests for extension of that comment deadline.

3 So that is under consideration now, and
4 we should know possibly this week, maybe early
5 next week at the latest, whether that deadline
6 will be extended.

7 E-mail is the preferred method to submit
8 comments at "consultation@BIA.gov". And all of
9 these materials are available on the BIA website.

10 So once -- the next steps, as far as
11 this rule -- once the comment period closes, we
12 will be reviewing.

13 We'll pull together the work group again
14 with the subject matter experts in reviewing all
15 the comments and the transcripts from each of the
16 meetings, and we'll make changes to the proposed
17 rule as appropriate. And then, ultimately, we
18 plan on publishing a final rule, then, in the
19 Federal Register.

20 I don't know the timing on that because
21 it really depends on the scope and complexity of
22 the comments. But once we publish that final
23 rule, then the final rule would become effective
24 30 days after publication.

25 So I think with that, I will open it up

1 to you all. And we have a microphone, if you
2 don't mind coming up to the microphone. And just
3 a reminder to state your name and your affiliation
4 for our court reporter.

5 And if we can start with -- are there
6 any tribal representatives here who would like to
7 make comments first? I don't want to put anyone
8 on the spot, if they don't want -- please.

9 DR. DAVIS: Good morning. Thank you for
10 offering us an opportunity to comment on this --
11 these regulations. My name is Dr. Carol Davis,
12 and I am a proxy representative for the Turtle
13 Mountain Band of Chippewa.

14 I have a proxy letter with me, and I
15 would like to read a statement from our tribal
16 chairman, and it's addressed to Ms. Sally Jewell.

17 Dear Ms. Jewell: The Turtle Mountain
18 Band of Chippewa Indians hereby establishes for
19 the record that we are opposed to Docket ID:
20 BIA-2014-0001, the proposed rule that would
21 authorize the BIA to streamline the process for
22 obtaining BIA grants of rights-of-way on Indian
23 land.

24 As a sovereign entity that is a
25 federally recognized tribe with an enrollment of

1 36,000 members, we want the record to show that we
2 are capable of negotiating our own rights-of-way
3 on our Indian lands.

4 This proposed rule negates the tribe's
5 authority by usurping the approval process away
6 from the tribe and giving it to the BIA, which
7 undermines the intent of the Indian
8 Self-Determination and Education Assistance Act.

9 We recognize that there are several
10 fractionated parcels among our individual
11 allotments. However, we are opposed to granting
12 the BIA the authority to approve the rights-of-way
13 on Indian lands on behalf of the individual --
14 individual landowners.

15 The Turtle Mountain Band of Chippewa
16 Indians is not a general allotment tribe and is
17 exempt from the BIA making negotiations on behalf
18 of our tribe -- and on behalf of our tribe and its
19 enrolled members.

20 This is a serious issue. We are
21 requesting that a special hearing be held on the
22 Turtle Mountain Reservation where all tribal
23 members, especially landowners, will have an
24 opportunity for input. Sincerely, Richard
25 McCloud, Tribal Chairman.

1 MS. APPEL: Thank you.

2 MS. TURNER: Thank you so much. This is
3 Jennifer Turner from the Solicitor's Office, and
4 thank you very much for your comment, and we
5 certainly appreciate your -- your comments.

6 As -- unfortunately, as a legal matter,
7 we are statutorily -- BIA and the Department is
8 statutorily required to approve rights-of-way
9 across Indian lands.

10 The act that forms the basis for these
11 regulations was passed by Congress in 1948, and it
12 grants the secretary broad approval authority and
13 requires secretarial approval of rights-of-way
14 across Indian land. So that -- that is where
15 these regulations come from, and that is what
16 we're relying on.

17 That said, we're -- in publishing these
18 proposed rules, we're -- you know, one of the
19 goals is to support tribal self-determination, and
20 we've included a lot of provisions in these regs
21 that give a lot of deference to tribes and to
22 landowners, generally, in negotiating their own
23 rights-of-way, recognizing that the landowners are
24 much better equipped to make all those calls than
25 the BIA is.

1 So, for example, as Liz mentioned
2 earlier, you know, we're no longer -- for tribal
3 land -- requiring appraisals but, rather,
4 deferring to tribes on setting their own and
5 negotiating their own compensation.

6 So all that said, we're certainly
7 interested in any ideas that you may have about
8 giving even more deference to tribes and
9 individual landowners.

10 MS. LITTLE OWL: I have a question. I'm
11 just wondering if the rest of you, maybe -- I
12 think everybody here would like to see these other
13 people be seated up here so that when we're asking
14 questions, that we might be able to look at who
15 we're speaking to.

16 MS. APPEL: Absolutely. If you are --

17 MS. LITTLE OWL: If you guys wouldn't
18 mind?

19 MS. APPEL: -- going to --

20 MS. LITTLE OWL: Cheryl Little Owl.
21 I'm, kind of, half-and-half: Turtle Mountain
22 Chippewa and Three Affiliated.

23 MS. APPEL: Sure. If any BIA folks want
24 to come up to the front, feel free.

25 MS. LITTLE OWL: Or get up so that when

1 we're speaking, we don't all have to turn around
2 and -- if you'll be seated up here, it'll be
3 easier for the people to know who we're
4 addressing.

5 (BIA representatives move up to the
6 front of the room.)

7 MS. LITTLE OWL: Maybe put their seats
8 up behind them so we know who we're speaking to.

9 MS. DANKS: Is it small enough in here
10 where you can hear us without the microphone?

11 AUDIENCE MEMBER: What did you say?

12 (Audience laughs.)

13 MS. LITTLE OWL: Some of you all have
14 really squeaky little voices, and we can't hear
15 you. Like her, for instance (pointing).

16 MS. TURNER: Was I too quiet?

17 MS. LITTLE OWL: You're too quiet.

18 MS. TURNER: My husband tells me I'm
19 loud.

20 MS. DANKS: So I guess, just to get
21 started, what we'll do is, we'll pass the
22 microphone down and everybody will introduce
23 themselves, and then -- then we'll take questions.

24 MS. APPEL: Liz Appel. I am with the
25 Office of Regulatory Affairs under the Assistant

1 Secretary for Indian Affairs.

2 MS. TURNER: Jennifer Turner from the
3 Solicitor's Office, Division of Indian Affairs.

4 MS. DANKS: Good morning. My name is
5 Kayla Danks. I'm the Superintendent of the Fort
6 Berthold Agency.

7 MR. CLIFFORD: I'm Rick Clifford, and
8 I'm the Deputy Realty Officer from the Great
9 Plains Regional Office in Aberdeen.

10 MR. WELLS: Tom Wells: Deputy
11 Superintendent, Fort Berthold Agency, New Town.

12 MR. HUNT: Jeff Hunt: Indian Affairs,
13 Division of Energy and Mineral Development.

14 MR. GEFFRE: Good morning. Jim Geffre:
15 Realty Officer, Great Plains Regional Office.

16 MS. CLARK: Good morning. Carla Clark:
17 Deputy Realty Officer, Great Plains Regional
18 Office.

19 MR. LA POINTE: Hi, good morning, again.
20 I'm Tim La Pointe: Acting Regional Director,
21 Great Plains.

22 MS. APPEL: Thank you, everyone. Now
23 that we have everyone properly introduced, do we
24 have additional comments? Do you want to come up
25 to the microphone?

1 MR. HOOD, JR.: My name is Carson Hood;
2 I'm the MHA Energy Administrator for Three
3 Affiliated Tribes. One of the undertakings that
4 we took as the energy department of the tribe is,
5 we took it upon ourselves to develop our own
6 right-of-way form, terms and conditions.

7 As we all know, and the obstacles and
8 the hurdles and that the allottees and the tribes
9 have to jump through to in order to get the
10 right-of-ways approved through the BIA, we
11 developed our own process that only involves
12 tribal surface rights, not the allottees, but we
13 have opened it up for the allottees to use our
14 right-of-way form.

15 And it's the open form; it's on our
16 website, at our MHA Energy -- MHA Nation Energy
17 dot com website, for you guys to review and take a
18 look at
19 ([http://www.mhanation.com/main2/departments/mha_energ
22 ergy_division/mha_energy_website/ROW%20Application
23 %20Form%202014.pdf](http://www.mhanation.com/main2/departments/mha_energ
20 ergy_division/mha_energy_website/ROW%20Application
21 %20Form%202014.pdf)).

22 And that's something that we took on
23 because we had a lot of issues that we were
24 looking at in front of us, such as north of
25 trespass. If you got a spill, who's responsible

1 for remediation? What type of bonding does the
2 oil companies have in case they have a BOP
3 failure?

4 A lot of these issues that we don't
5 quite understand. Piggybacking, for instance. If
6 we get a utility right-of-way, are we allowed to
7 get a temporary water line on that utility
8 right-of-way?

9 These are some of the questions that the
10 tribe has with the BIA right-of-way form right
11 now, and so we have developed our own which
12 specifies specifically what type of right-of-way
13 this is going to be used for.

14 And also piggybacking. You know, for --
15 for one operator who has the right-of-way to allow
16 another operator to piggyback off of their
17 right-of-way and put a temporary water line into
18 an underground pipeline right-of-way.

19 And so these are the things that we're
20 looking at as a tribe. And so that's my question
21 to BIA, is: What type of bonding amounts --
22 what's north of trespass and how that process
23 goes, because we've just had a really big
24 production water spill on our reservation, and it
25 drew a lot of national research.

1 And so these are the questions that I'm
2 going to be asking the BIA, so -- and if you guys
3 have any questions for the tribe, I would be more
4 than happy to assist you in any manner.

5 The natural resource director, Clarycia
6 Mandan; Martina Turner, Regulatory Affairs Office,
7 Energy Department; Shannon Aski, our energy
8 attorney, based out of D.C. herself.

9 And so, you know, thank you. With that
10 being said and, specifically, for the -- for the
11 north of trespass, what's the process there?

12 I know, my department, when we have
13 spills that, you know, either stay on-location or
14 leave location, what's BIA's process of notifying
15 the landowner and providing adequate compensation?
16 and what is that adequate compensation, and is it
17 adequate according to the landowner themselves, or
18 for the tribe?

19 MS. MANDAN: Just to add to that: We're
20 experiencing more occurrences where right-of-ways
21 are expired and, in our view, that's trespass.

22 So what are the obligations of the
23 Bureau to act, and what are your fines, and -- you
24 know, because we're developing our own tribal
25 process on trespass, but we want to make sure

1 that, you know, we're working with our trustee to
2 enforce -- the big issue is enforcement.

3 MR. HOOD, JR.: I think we just threw
4 three questions at them at once.

5 MS. DANKS: Okay. Piggybacking: The
6 proposed regulations. The reason they're using
7 the 1948 Act and not the older acts is because
8 piggybacking -- if the right-of-way grant
9 specifically states the purpose and doesn't just
10 grant right-of-way, then they cannot piggyback
11 under the 1948 Act.

12 Previously, under the 19- -- is it the
13 1901 Act? If there was some ambiguity on whether
14 or not they could piggyback, and in some states,
15 if the state allowed for piggybacking, then they
16 could piggyback if the right-of-way didn't state
17 specifically. So I know that's -- and Jennifer
18 might want to clarify that more.

19 MR. HOOD, JR.: Well, to add to that
20 real quick, on the piggyback term, can you explain
21 to the landowners what the term "piggyback" means
22 in reference to a right-of-way underground
23 pipeline infrastructure establishment that's
24 included with an above-ground temporary freshwater
25 line?

1 And is the allottee being compensated
2 for that temporary right-of-way for that
3 freshwater line? Because I'm not sure that the
4 allottees are getting properly compensated, as
5 well as the tribe.

6 MS. DANKS: The allottees are being
7 compensated. Piggybacking is when you have a
8 right-of-way, and let's say -- I want to use a
9 fake name, here -- The Jones Company has a
10 right-of-way, and they have a road right-of-way,
11 and they decide to run a pipeline down the side of
12 the road, and they don't contact the landowner or
13 BIA and get consent and compensate the landowner
14 for the pipeline, that's piggybacking.

15 If the right-of-way is an old
16 right-of-way -- and there are a lot of old
17 rights-of-way -- and so, if it's an old
18 right-of-way and it doesn't specifically say, then
19 we have to look at the right-of-ways in the
20 Solicitor's Office to try to see whether or not we
21 have the right to send a trespass notice out
22 there, because that's one of the reasons they're
23 updating the regulations.

24 And so, basically, we want to improve
25 and make the rights-of-way stronger.

1 MS. TURNER: Yeah, and to follow up what
2 Kayla was saying on piggybacking. The proposed
3 rule does have a specific section devoted to
4 piggybacking: It's 169.123. And it talks about
5 using a right-of-way for a new or a different use.

6 So, for example, you have -- as Kayla
7 was saying, you have a gas and oil pipeline, and
8 then someone wants to come along and use it for
9 utility purposes.

10 You know, the question, then, becomes,
11 Well, is that utility purpose, kind of,
12 contemplated under the original purpose of the
13 right-of-way?

14 And so that tends to become a legal
15 question that's sent to the Solicitor's Office.
16 But the new proposed regs try to provide a little
17 more definition to that process in a way that the
18 current regs do not which, they do not address
19 that in the current regs.

20 And so, we encourage everyone to take a
21 look at this new section, 169.123, and see if it
22 addresses some of the issues that are coming up.

23 But I guess you had raised a number of
24 questions, in addition, about bonding and
25 trespass, as well. So I'll talk about bonding a

1 little bit.

2 Bonding is a new requirement in the
3 proposed regulations. It didn't exist in the
4 current regulations, and it's one of the issues
5 that we've specifically flagged for comment when
6 we were issuing the new leasing regulations.

7 We got a lot of comments and concerns
8 about bonding -- about bonds: That they're
9 extremely difficult to get in Indian Country, that
10 they, kind of, scare developers away, for example.

11 But at the same time, we got comments
12 from landowners that, "Well, you need to protect
13 our interests, and bonds make sure that we get
14 rent; that, if anything goes wrong, you know,
15 we're, sort of, covered in terms of protecting the
16 property."

17 And so, after two consultations in the
18 leasing context, we came up with language that
19 addressed comments on bonding for the leasing
20 rights, and we, kind of, relied on some of that
21 bonding language in these new right-of-way regs.

22 And so -- trying to find the specific
23 provisions that talk about what's required for
24 bonding (looking through pages) -- but basically,
25 it deals with rent and any remediation costs.

1 And so, if you're concerned that, with
2 an oil and gas pipeline, there could be a spill,
3 then maybe that's something that we should
4 incorporate in the final rule: That the bond
5 should reflect any potential damages from any
6 spills.

7 MR. HOOD, JR.: As from an environmental
8 perspective --

9 MS. TURNER: Yeah, exactly.

10 MR. HOOD, JR.: Yes. I heard about your
11 waive of process you guys have with the amount of
12 drilling on FBIR. I just don't see no reasonable
13 effort to allow a waive of process in that.

14 We're talking about -- we just had a big
15 spill that cost multi-million dollars to
16 remediate. And if the BIA is going to allow a
17 waiver on the bond, and then if there was a spill
18 that was happening inside that waiver of that
19 bond, who's going to be responsible?

20 It's going to be BIA? Is it going to be
21 the BLN? Is it going to be the tribe? Is it
22 going to be the allottees? You know, I just don't
23 agree with that de facto "reasonable waiver" for
24 remediation -- for a bond when it comes to
25 remediation concerns.

1 MS. TURNER: Okay. And the regs give
2 BIA discretion to waive the bond if they determine
3 it's in the best interests of the landowners. So
4 certainly, with an oil and gas pipeline, for
5 example, that's something in the possibility for
6 environmental damage; that's something that would
7 go into BIA's calculations.

8 So the waiver's not mandatory, by any
9 means: You need landowner consent, and it has to
10 be in the best interests of the Indians. So
11 again, we're definitely interested in any comments
12 on the bonding provisions.

13 MS. JULETTA BIRDBEAR: Can I ask you --
14 and maybe you addressed this at the beginning --
15 when I read this document, I had to ask myself,
16 "Where is the landowner interests being protected
17 in this document?"

18 And I'm going to ask you: Who is the
19 working -- who is the working group that put the
20 document together? Can you please provide who
21 they are, who these experts are?

22 This is a question. My name is Juletta
23 Birdbear. I'm from Fort Berthold; I'm a
24 landowner. I am asking you to please identify for
25 the rest of the landowners here in attendance:

1 Who are the members of the working group that put
2 together the proposed language on this revision of
3 the ROW?

4 As a landowner, I fail to see the
5 interests of landowners protected in this
6 document. I do see heavy prevalence of the
7 protection of other interests.

8 Even the tribe is questioning their
9 interests as not being protected. I want to know
10 who these experts are, and I want to know where's
11 the landowners sitting at that table crafting this
12 document?

13 MS. APPEL: Sure. I -- I don't know off
14 the top of my head, now, who -- there were several
15 BIA people: Matthew Kirkland, who was the head of
16 Trust Services at the Bureau of Indian Affairs;
17 and then several realty specialists in the
18 regions.

19 But we can have their names all posted
20 on the website so that you can see who each of
21 them are. And it's certainly not the intention in
22 updating these regulations to lessen the
23 protection of tribal interests or landowner
24 interests.

25 So if you have suggestions about how BIA

1 can better protect the landowner interests, please
2 provide us with those suggestions so that we can
3 incorporate them.

4 MS. PACKUHEA: As an obligation of the
5 trust responsibility to the landowners, I would
6 suggest that you provide us with a legitimate
7 attorney so that we can have our interests
8 addressed. Elise Packuhe. Landowner: Fort
9 Berthold.

10 MS. THEODORA BIRDBEAR: Yes, my name is
11 Theodora Birdbear. I'm from Mandaree, Fort
12 Berthold Indian Reservation. And I see that, in
13 the regulations you drafted, it has very weak
14 notification to the individual Indian surface
15 owner.

16 You require only constructive -- you
17 allow the BIA to use constructive notice, whereas
18 you demand that the -- you demand of yourself that
19 you provide a certified mail to the oil companies.

20 I disagree with that strongly. You have
21 an obligation to notify the individual tribal
22 members. And you have an obligation to get their
23 address.

24 I disagree with that strongly, and I say
25 that you need to strengthen the notification of

1 the BIA decision-making to the individual
2 landowner in the right-of-way decision-making.

3 I also object to the idea that the BIA
4 is proposing that they will make the decision on
5 behalf of the landowners. This is -- we're in the
6 year 2014, and self-determination doesn't only
7 apply to tribal councils; it applies to the
8 individual landowner.

9 So the individual Indian landowner
10 should be making that decision, and you, the
11 Bureau of Indian Affairs, have an obligation to
12 assure they make an informed decision on any
13 right-of-way.

14 And another comment I have to say is, I
15 am glad the BIA Superintendent is here. I want
16 some meetings held for the individual surface
17 owners, landowners, on Fort Berthold, discussing
18 in-depth what the implications of this draft
19 proposal is. Thank you.

20 MS. APPEL: Thank you.

21 MS. DANKS: I want to thank you for all
22 your comments because the comments are considered
23 when they publish the final rule.

24 So these are -- I just want to say these
25 are all good comments, and these are only proposed

1 regulations. And so I'm glad to see that the
2 landowners are here and that they're active and
3 commenting.

4 MS. JULETTA BIRDBEAR: My name Juletta
5 Birdbear. I read the document as well as I can
6 understand it, and I, too, am bringing the request
7 that our local Bureau of Indian Affairs do hold
8 meetings for the landowners on Fort Berthold.

9 Fort Berthold is going through the most
10 intensive oil and gas development in history.
11 That activity demands that we understand this
12 document thoroughly if it is going under revision.

13 In other locales, the Bureau has held
14 meetings for individual Indians. We know this.
15 But that is lacking here on Fort Berthold.

16 We have to come to Bismarck in order to
17 speak to this issue. Bismarck is located two
18 hours off the Fort Berthold Reservation, where all
19 the oil and gas development is happening.

20 In looking at this document, there is a
21 section there that allows -- it's 169.008, Section
22 A, Section 3, Section (iii) -- three dots. And
23 what that does is allows for State jurisdiction
24 over an ROW. And I'm not sure who put that in.
25 Who put that suggestion into this document? Maybe

1 someone can respond to that.

2 And I see someone has already asked you
3 to extend the deadline, and that you're responding
4 to that within this one week.

5 So maybe you can give me a response
6 right now as to who put this requirement --
7 consideration for State jurisdiction. Page 29.
8 You must be familiar with your own document.

9 MS. TURNER: Yeah, I'm just trying to
10 figure out which subsection you were referring to.
11 But it generally --

12 MS. JULETTA BIRDBEAR: It says, "In
13 lieu --" or: If the landowner expressly agrees to
14 the grantee -- the oil company, the pipeline
15 company -- to waive and to allow the State, then
16 that will happen.

17 My -- my big concern is, a lot of people
18 are not familiar with the legal terminology on
19 documents that are placed in front of them, nor is
20 an explanation provided, and that a landowner may
21 inadvertently sign a document without full consent
22 of the legality of that document, and it will
23 forever hold.

24 That is dangerous language that is being
25 put in this document. I want to know who put it

1 in there. If we are talking about expanding and
2 respecting the Indian's right to make a decision,
3 an informed decision, who put that language in
4 here?

5 We're aware that we do have the right to
6 consent, and that is an issue in itself.
7 Self-determination gives my tribe and myself the
8 right to make that decision about my land.

9 This document is still based on the
10 previous language that allows the Bureau of Indian
11 Affairs to make that decision without my consent
12 in various forms.

13 That goes counter to self-determination.
14 That is counter to my right to make that decision.
15 I wish -- and I must tell you -- I reserve that
16 right to make that determination about my land.

17 MS. TURNER: We appreciate your concerns
18 about the applicability of State law. And the
19 language in the reg -- regulation comes from a few
20 different sources.

21 First, there are certain circumstances
22 where Congress or the Courts have actually made
23 State law applicable, and so the regulations are
24 responding to that.

25 And, you know, we don't have --

1 unfortunately, we don't have control over what
2 Congress may or may not do. And then, the same
3 goes with Courts.

4 And as far as the provisions where
5 parties to a right-of-way voluntarily agree to
6 have State law apply, we've had situations where
7 tribes, for example, have come to us, and said,
8 "Well, we don't have our own code governing X, Y,
9 and Z."

10 And so, in the absense of that code,
11 we're voluntarily choosing to adopt the applicable
12 state or local law on that issue. And so --

13 MS. JULETTA BIRDBEAR: As a trust agency
14 for a tribe and for individual Indians, should you
15 not be focusing on helping these tribes develop
16 their own codes rather than defaulting to a state?

17 MS. TURNER: Yes. BIA does, you know,
18 support -- certainly supports tribal
19 self-determination and their rights to do that.

20 But in some instances, for example, if
21 the tribe wants the lease right away and has not
22 gone through the formal -- you know, its formal
23 governing process of adopting specific tribal law
24 provisions, you know, it's -- we, certainly, defer
25 to their choice to adopt State law.

1 And that may just be temporarily, for
2 example, until they adopt their own ordinances.
3 But, you know, we are not going to second-guess
4 their decisions to -- for a temporary or even on a
5 permanent basis to adopt State law if they think
6 that the State law works for them.

7 So we -- I, certainly, appreciate your
8 concerns, and at the Solicitor's Office, we are
9 constantly battling against the applicability of
10 State law.

11 And so it is, you know, funny for me to
12 see that State law may apply because -- given that
13 we are fighting against State law applying.

14 But, as I said, in some cases, we're
15 left with no choice because Congress has imposed
16 on us or because the new landowners themselves
17 have chosen to make it apply in specific
18 situations. But, certainly --

19 MS. JULETTA BIRDBEAR: But that doesn't
20 answer my question. That language does not belong
21 in this document. Period.

22 MS. TURNER: Okay. And thank you for
23 your comment. As others have mentioned, once the
24 comment period closes, we will all review -- we go
25 through the comments one-by-one-by-one, and we

1 consider them, and argue over them, to come up
2 with the final rule. And so we'll certainly take
3 that under consideration. Thank you.

4 MS. JULETTA BIRDBEAR: All right, so you
5 don't have an answer. I'm going to ask you about
6 page 43 on the valuation: 169.111, section B,
7 section 2.

8 And the comment I have is that that
9 phrase is a direct conflict, whereby it allows the
10 grantee -- who may be an oil company, who might be
11 a pipeline company -- to make a determination in
12 the appropriate valuation mechanism used.

13 And I want to know: Who put that
14 language in this section?

15 It's not in any other section in that,
16 if you're going to -- if you look carefully. But
17 it's in there, and that's a direct conflict.

18 MS. DANKS: I want to make one comment
19 about jurisdiction, to step back. One of the
20 things in the other regulations that kind of --
21 this elaborates more, but we want comments on
22 jurisdiction, and I'm sure we're going to get
23 them, but there is a U.S. Supreme Court case
24 called the Strate case, whereby the --

25 MS. JULETTA BIRDBEAR: I understand; I'm

1 familiar with that.

2 MS. DANKS: Okay. I'm sure you are.

3 MS. JULETTA BIRDBEAR: But I would like
4 an answer --

5 MS. DANKS: And one of the things --

6 MS. JULETTA BIRDBEAR: -- to the direct
7 conflict which I am asking you to respond to.

8 MS. DANKS: One of the things we have
9 our tribes do is, they assert in the right-of-way
10 document that they have jurisdiction.

11 And so that's why we're trying to
12 elaborate more on jurisdiction, so that the tribes
13 can be aware that they need to throw that in
14 there, in that right-of-way document.

15 MS. JULETTA BIRDBEAR: This is on
16 valuation, Superintendent. This is not
17 jurisdiction.

18 MS. DANKS: I just wanted to add that.

19 MS. TURNER: Yeah. And so, on your
20 question about the accepting -- the Bureau
21 accepting other valuations --

22 MS. JULETTA BIRDBEAR: No, it's not
23 accepting other valuations. It's accepting other
24 valuations determined by the grantee, as well, in
25 that. You read that on section B, number 2.

1 MS. TURNER: And --

2 MS. JULETTA BIRDBEAR: And that is a
3 direct conflict if that grantee is, then, involved
4 in that process.

5 MS. TURNER: Yeah, and I appreciate your
6 concern. The regulations first require certain --
7 place certain requirements on those other
8 valuations.

9 So it's not the grantee, you know, just
10 making up a number and then saying, "Well, that's
11 how much compensation you're going to get on the
12 right-of-way."

13 Those compensating -- those other
14 valuation methods have to comply with USPAP, which
15 is a method of doing appraisals.

16 And in addition, there's the extra level
17 of review of BIA having to approve that. And so
18 BIA is going to take a look and not just accept it
19 wholeheartedly and say, "Yeah, that's good
20 enough."

21 They are going to look at those
22 appraisal methods. So the regulations, as
23 drafted, do have that second level of review and
24 the requirement for USPAP.

25 But we will certainly take your comment

1 under consideration, and concern about the --
2 who's doing the valuations.

3 MS. JULETTA BIRDBEAR: Who is -- who is
4 in charge of setting up the criteria for the
5 valuation? Who is making that selection? Is it
6 the same party that, then, is a party to that
7 action?

8 That's my concern. That's a direct
9 conflict. And the way it is written now, if it
10 remains, it is a direct conflict.

11 And the other comment -- and I will
12 submit these in writing: I'd like to know if you
13 will, Superintendent Kayla Danks, if you will hold
14 an informational session on Fort Berthold for the
15 landowners so that we don't have to travel two
16 hours to come here to listen to this.

17 MS. DANKS: Yeah. I'm happy to hold
18 one. But the thing is, this is a consultation.
19 So all comments are recorded, and then they're
20 used in formulating the final rule.

21 If it's informational, then that would
22 be just discussion-based, because only the
23 secretary can promulgate regulations. And so --

24 MS. JULETTA BIRDBEAR: You're not --
25 we're not promulgating regulations during these

1 comment periods; you're collecting our comments.

2 MS. DANKS: Well, I'm going to --

3 MS. JULETTA BIRDBEAR: This is a
4 collection process of this rule-making regulation.
5 And our -- and according to this document,
6 participation is required -- is a federal mandate
7 in this document. It's a requirement.

8 It shouldn't be a requirement to jump in
9 your car and put gas in and go two hours to
10 participate.

11 MS. DANKS: Well, I'm happy to have an
12 informational meeting with the landowners. But I
13 wouldn't --

14 MS. JULETTA BIRDBEAR: And we need
15 "comment" attached to that. The reason I said
16 "informational": We need to understand this
17 document before we can make an informed comment.

18 MS. DANKS: And -- so, I would need time
19 to set that up. So definitely, we need an
20 extension.

21 MS. JULETTA BIRDBEAR: We need a comment
22 period on Fort Berthold. Let me be very clear
23 about that.

24 AUDIENCE MEMBER: Yes. For the
25 landowners.

1 MS. DANKS: Yeah, if I'm authorized to
2 do it. And I have bosses, too. So if I'm
3 authorized to do it, I'd be happy to set that up.

4 MS. JULETTA BIRDBEAR: I need to know
5 now. We have a deadline to meet of August 18th.

6 MS. APPEL: Yeah, and I'm going to
7 interpret your comment as also formally requesting
8 an extension of the comment period.

9 So since that -- an extension would have
10 to happen in order for that informational hearing
11 to happen, it sounds like.

12 MS. JULETTA BIRDBEAR: Let me clarify
13 for your -- so you understand me 100 percent.

14 MS. APPEL: Mm-hmm.

15 MS. JULETTA BIRDBEAR: The hearing on
16 Fort Berthold will be for the purpose of
17 collecting comments from landowners on Fort
18 Berthold, which -- these comments will be
19 considered and implemented into the final daft.

20 MS. APPEL: Okay.

21 MS. JULETTA BIRDBEAR: It's not just
22 informational.

23 MS. APPEL: Right. Okay. Right, we --
24 sorry. We were picking up on your
25 characterizations. It'll be --

1 MS. JULETTA BIRDBEAR: First we need to
2 understand this document.

3 MS. APPEL: Right, it'll be --

4 MS. JULETTA BIRDBEAR: First, we need to
5 be able to access this document on Fort Berthold.

6 MS. APPEL: All right, understood. And
7 I also wanted to point out that we are having a
8 teleconference on Thursday for people who want to
9 call in.

10 That information is also in the Federal
11 Register notice. But we have heard your request
12 for a meeting specifically on Fort Berthold, so --

13 MS. JULETTA BIRDBEAR: A hearing: A
14 comment hearing. So don't reduce it to an
15 informal session. It is a comment hearing; the
16 same level that's happening here.

17 MS. APPEL: Got it.

18 MS. JULETTA BIRDBEAR: Mm-hmm. And can
19 anyone from Regional respond to this today?

20 MR. LA POINTE: To the formal request?

21 MS. JULETTA BIRDBEAR: Yes.

22 MR. LA POINTE: I mean, I think that's
23 part of -- that's going to have to be part of the
24 process. I mean, this hearing is not just for
25 Fort Berthold.

1 MS. JULETTA BIRDBEAR: I understand.

2 MR. LA POINTE: This comment period
3 isn't just for Fort Berthold, so --

4 MS. JULETTA BIRDBEAR: I understand.

5 MR. LA POINTE: We have other concerns
6 other than just Fort Berthold.

7 MS. JULETTA BIRDBEAR: I understand.

8 MR. LA POINTE: We're trying to collect
9 as many comments as we possibly can. That's why
10 we're here.

11 I mean, I think that -- you know, if you
12 look through this, it was published -- the dates
13 were published we were going to be here.

14 And I think that, if we go out to
15 specific reservations, that would, probably, also
16 have to be published, right?

17 MS. APPEL: Yes.

18 MR. LA POINTE: So that's something
19 we'll have to take back and make a decision on.

20 MS. JULETTA BIRDBEAR: Perhaps if it had
21 been better planned --

22 AUDIENCE MEMBER: Exactly.

23 AUDIENCE MEMBER: Yes.

24 MS. JULETTA BIRDBEAR: -- at the
25 beginning, then you wouldn't have to be making a

1 hard choice on that. Public participation is a
2 requirement of this document.

3 MR. LA POINTE: And that's -- and again,
4 that's why we're here. And we want your comments,
5 and that's -- we want your participation.

6 MS. JULETTA BIRDBEAR: No, you don't.
7 When you set it outside of our area, that is an
8 implied message that you don't.

9 MR. LA POINTE: Well, we're within the
10 Great Plains Region, so we're trying to set it up
11 in a situation where we can get to as many people
12 as possible.

13 So I don't know what else to say, other
14 than: We will take your considerations back and
15 make the determination if we can make specific
16 trips to certain reservations.

17 MS. JULETTA BIRDBEAR: You're already
18 located on Fort Berthold.

19 MR. LA POINTE: Correct. But the
20 individuals who would be doing the consultation
21 are not.

22 MS. APPEL: And I would like to say that
23 Bismarck was chosen because we are aware of, in
24 the area, there being rights-of-way interests and
25 rights-of-way -- and rights-of-way issues. That's

1 also why the other location in Arizona was chosen.

2 And unfortunately, we're limited by
3 resources and how many places we can go, but we
4 have heard your request loud and clear and will go
5 back to the assistant secretary with that request.

6 MS. JULETTA BIRDBEAR: The other --
7 thank you. The other issue has to do with the
8 appeal process. In this document, there is no
9 appeal section referenced.

10 It does -- and also in this document,
11 there's references to other -- such as "Chapter
12 Two," which is not a part of this document.

13 In order to make an informed comment, we
14 need to know what it is this is based upon. And
15 when you refer to a document outside of this
16 document, that makes it extremely hard to make an
17 informed comment.

18 MS. APPEL: So Jennifer may be able to
19 answer this better, but we can -- we can make the
20 Part 2 -- 25 CFR Part 2, that governs the
21 administrative appeals procedures -- they govern,
22 broadly, basically, any administrative appeal of a
23 BIA official.

24 But we can make that available, as well.
25 Those are not currently under consideration for

1 amending.

2 MS. JULETTA BIRDBEAR: I understand.
3 But you make reference to it, and whatever part
4 you're referencing, you should attach that to this
5 document so we can --

6 MS. APPEL: That's a great point, yeah.
7 Thank you.

8 MS. JULETTA BIRDBEAR: I have a question
9 on the bonding -- the new bonding requirement: I
10 fail to understand where a tribe or an individual
11 Indian may waive their right to require a bond
12 that's going to protect their property, their
13 assets.

14 MS. APPEL: So are you saying that there
15 shouldn't be any -- any possibility for a
16 landowner to waive a bond; am I --

17 MS. JULETTA BIRDBEAR: I see a waiver as
18 being beneficial to an outside third party, not of
19 this document's interest. That's where I see the
20 waiver being beneficial.

21 MS. APPEL: So do you --

22 MS. JULETTA BIRDBEAR: To a grantee that
23 is not a tribe and not an individual Indian. So,
24 yes, there should be no waivers.

25 MS. APPEL: Okay. So delete the

1 waivers?

2 MS. JULETTA BIRDBEAR: Do it.

3 MS. APPEL: Thank you.

4 (Audience applauds.)

5 MS. APPEL: I really appreciate this
6 picking up -- we haven't heard these comments, so
7 it's great to get your input. Do we have other
8 comments?

9 MS. MANDAN: Clarycia Mandan. I'm
10 natural resources administrator for the Three
11 Affiliated Tribes. We've worked, as Carson said,
12 very extensively on the right-of-way issues.

13 Probably, because of the volume, we have
14 a lot more experience in dealing with right-of-way
15 issues than, maybe, some of the other tribes in
16 the region, just because we've been presented with
17 so many questions on them.

18 One of the questions I have is: I see
19 in the slides, here, that it looks like the
20 permission to survey more -- or, the permission to
21 survey has been foregone in the new proposed reg.

22 It says that there is no BIA approval
23 required to survey land. But it also goes on to
24 say that they must include, when they present the
25 right-of-way, a record of consent.

1 So I guess I'm a little confused as
2 to -- are you intending to do away with
3 "Permission to Survey" consent forms altogether
4 for landowners? Is that what the intent of this
5 proposed rule is?

6 MS. TURNER: So there's a couple of
7 steps in the right-of-way process. And the first,
8 as you know, is the permission to survey.

9 And so, in the past, BIA approval was
10 required which, kind of, lengthened the approval
11 and granting process.

12 And so, in recognition of the fact that
13 landowners do best know how to manage their land
14 and to, you know, decide who comes and comes off
15 their land, for the survey issue, we have
16 completely eliminated the requirement for BIA
17 approval.

18 But third parties are still required to
19 get the consent of the landowners. So BIA will,
20 at the request of the third party, will give them
21 the landowner information, so that the third party
22 can, then, reach out to the landowners to get
23 consent to go on the land to survey it.

24 But then, when it comes to actually
25 granting the right-of-way itself, BIA approval is

1 still required, and landowner consent is required
2 again for the right-of-way.

3 So it's two consents for survey and the
4 right-of-way itself, but only one BIA approval.

5 MS. MANDAN: So there does have to be --
6 there has to be proof of consent for a survey
7 filed with the right-of-way?

8 And is that a BIA form, then? Or is
9 that -- what would that be, then, under the new
10 rule?

11 MS. TURNER: Sorry, I'm looking for the
12 exact language. I don't think it has to be on a
13 form.

14 But certainly, as we do implementation
15 of this rule, I think we can talk about forms, if
16 that would be helpful.

17 MS. MANDAN: Well, it would certainly
18 help to outline what would be an acceptable form
19 of proof of consent. And I think that might get
20 very confusing for companies.

21 We deal with this all the time: With
22 companies coming on the reservation who aren't
23 familiar with the BIA requirements or the trust
24 land requirements. And oftentimes, they don't
25 realize the extent of majority consent, you know,

1 to obtain -- for permission to survey.

2 And I really don't see how you can get
3 around that trust function, myself, because you
4 would have companies coming on with
5 misunderstandings about, maybe, getting one
6 landowner's signature, but that landowner might
7 not be the majority.

8 And unless you can show that third
9 party, you know, the land ownership and the
10 requirement for majority consent, I think we can
11 have a lot of problems with a lot of trespass and
12 "survey without consent" issues. That's just my
13 personal feeling on it.

14 The other thing I would like to ask
15 about is: I see, also, that you've changed the
16 ability to direct pay for just ten or fewer
17 landowners.

18 I know that third parties have always
19 wanted to be able to do direct payment for
20 right-of-ways. But I'm questioning why do you
21 have a direct payment allowance just for the ten
22 or fewer landowners?

23 Why don't you have the direct pay
24 allowance for all landowners when you receive a --
25 when you obtain a majority interest consent?

1 I know, speaking on the behalf of -- I
2 don't know if the companies will comment today,
3 but I know companies have always asked for that,
4 and felt that that was -- would have been a
5 quicker way to do business on the reservation.

6 But I don't understand why you just have
7 it for tracts with ten or fewer owners.

8 MS. TURNER: The direct pay provisions
9 in these regs are actually copied from the direct
10 pay provisions in the newly updated leasing
11 regulations, and so the "ten landowner" limitation
12 was established in the leasing regulations because
13 that was viewed as, kind of, administratively the
14 easiest to -- you know, it wasn't too many but not
15 too few, in the leasing regulation context.

16 And so we're certainly open for comment
17 here if that's considered to be too many or too
18 few, you know.

19 We'd love to hear what everyone's views
20 are on the direct pay provisions and the number of
21 landowners, so thank you for raising it.

22 And if you would prefer that it be
23 opened up to as many landowners then, you know,
24 that is certainly something that we will consider.

25 MS. DANKS: Currently, right now, the

1 Bureau of Indian Affairs requires 100 percent for
2 allotted land for direct -- they would have --
3 100 percent of the landowners would have to come
4 in and ask for direct pay. And so, basically, we
5 don't have any direct pay.

6 MS. MANDAN: -- situation --

7 MS. DANKS: It all goes to -- goes
8 through the Bureau of Indian Affairs because we
9 have a lot of allotted land.

10 And so we opened it up for comment just
11 to -- this is proposed, so certainly, that's good.
12 We want to hear comments.

13 MS. MANDAN: And then, I'd also like to
14 comment on the assignment divisions. I'm glad to
15 see that the BIA is finally addressing this.

16 This has also been something that we
17 have really been grappling with because, the way
18 business is done in, particularly, the energy
19 industry -- maybe not so much with the utility
20 right-of-ways or the road right-of-ways, but with
21 the energy industry -- the way business is done
22 is, companies will come in -- smaller companies
23 will come in and develop, by obtaining the
24 right-of-ways, and then flip them.

25 And they'll flip them at quite a large

1 profit. We've seen them flip them for -- obtain
2 them at ten cents on the dollar and then flip
3 them, you know. So I'm glad that this is being
4 addressed in the new rules.

5 And the -- you know, we, as Carson had
6 just indicated, adopted a right-of-way provision
7 of the tribe, that we -- since we couldn't require
8 them to get our approval for assignment under the
9 current regulations, we adopted a provision that
10 said that at least they have to give us notice,
11 you know. So that wasn't even being done in the
12 current situation.

13 So I think, you know, as long as
14 companies are aware that, once they take the
15 right-of-way, if they attempt to sell it, they are
16 going to have to provide notice to the owners and
17 get permission again for that sale.

18 And I don't know what that will do to
19 the valuation of our right-of-ways on the
20 reservation or what it will do to Industry, and
21 maybe they would want to comment on that later on.

22 The other one was on mortgages, and that
23 was also a very big concern that we had. As you
24 all know, under the current 25 CFR, an Indian
25 landowner themselves cannot mortgage or convey or

1 sell their land without the BIA's permission, but
2 once it was taken in the right-of-way, any company
3 that wished to mortgage or sell or convey their
4 property, this was being done.

5 So I think this is a -- I think I really
6 do endorse, you know, supervision of the mortgages
7 and the approval requirement.

8 I know it may become onerous for the
9 companies, but it's a rule that we as the Native
10 American landowners have lived with for a long
11 time now, so I think why, if it applies to us, why
12 shouldn't it apply to the companies?

13 But I do have concerns about how quickly
14 the BIA will be able to approve both the
15 assignments and the mortgages.

16 My concerns are that you've given
17 yourself a 60-day timeline, I think see, here, in
18 the approval of the right-of-ways themselves.

19 And I think that 60-day timeline, in
20 terms of business interests, should also apply to
21 the approval of assignments and the approval of
22 mortgages, strictly because that is not the way
23 business works in -- particularly if you're
24 dealing with the energy industry or utility
25 assignments or mortgages.

1 We need to be able to -- as an agency,
2 you can't promulgate a regulation that will,
3 basically, kill the economy on Fort Berthold or
4 anywhere else.

5 So you need to be able to make sure that
6 you can respond -- if we put these rules into
7 place, that you can respond and make these
8 approvals.

9 Then we don't have these long delays
10 like we are currently experiencing with the
11 right-of-way approvals themselves. If you don't,
12 you, basically, will probably have shut down the
13 industry. And there was one more comment I had --

14 MS. APPEL: Before you go on, can I ask
15 for a clarification on that? So were you saying
16 that there should be a -- because the proposed
17 rule has a 30-day time period for BIA to approve
18 assignments and amendments and mortgages.

19 MS. MANDAN: Oh, it does have a
20 30-day --

21 MS. APPEL: Yeah.

22 MS. MANDAN: Okay. I didn't see that.

23 MS. APPEL: Does that sound reasonable,
24 do you think?

25 MS. MANDAN: I think it's reasonable for

1 Industry: A 30-day period.

2 MS. APPEL: Okay.

3 MS. MANDAN: But, you know, we really
4 have to make sure that we -- that the BIA isn't
5 executing a regulation that they're not capable of
6 carrying out.

7 MS. APPEL: Yes. Right.

8 MS. DANKS: The -- I just want to make
9 one comment on that -- and this is with the
10 leasing regulations, too, that were finalized.

11 The 30-day timeframe for approval, I
12 guess, for mortgages -- is it 60 for
13 rights-of-way? -- but the timeframe starts when we
14 have a complete application.

15 MS. MANDAN: Yeah, a complete
16 application.

17 MS. DANKS: And a lot of times, people,
18 when they come in, they get the addresses and, you
19 know, consult. They think it starts then.

20 But we have to have the complete
21 application; we have to have NEPA compliance; we
22 have to have all of the consents and evaluation.

23 MS. MANDAN: You're not saying you need
24 NEPA compliance for the mortgage or assignment
25 provisions, though, do you?

1 MS. DANKS: I'm talking about the
2 right-of-way application.

3 MS. MANDAN: Just for the right-of-way?

4 MS. DANKS: Yeah, just for the --

5 MS. MANDAN: I just want to make sure.

6 MS. DANKS: Yeah.

7 MS. MANDAN: And then the last question
8 that I had is: I see that you do provide appeal
9 process for denial of a right-of-way or other
10 assignment or such, but my question goes to this,
11 is: Would a third party company that was seeking
12 this have appeal standing?

13 Because I know in the past, under the
14 current appeal regulations, sometimes third party
15 companies have been denied the appeal process
16 because they have no standing under the
17 regulations because they're not an individual
18 Indian or a tribe.

19 So I want to know if the companies will
20 actually have standing if they're denied a
21 right-of-way under the current appeal regulations.

22 MS. TURNER: The proposed rule provides
23 that if BIA does disapprove the right-of-way, that
24 only the landowners can appeal that disapproval.

25 And the logic behind that is that -- you

1 know, let's say that the oil -- you know, the
2 energy company doesn't have all of the consents
3 because the landowners don't want the
4 right-of-way.

5 So our position is: Well, then, why
6 should the energy company get to appeal that
7 denial and create all sorts of headaches for BIA
8 and the landowner when the landowners don't want
9 that right-of-way on their land?

10 So the regulations are very clear, here,
11 that only, as I said, the landowners may appeal a
12 right-of-way denial.

13 MS. MANDAN: Okay. So if a company
14 failed to provide something like a -- you know, a
15 bonding, or something like that, and the
16 right-of-way was denied, then there is, basically,
17 no due process for the companies?

18 MS. TURNER: They don't have an appeal
19 right. But if the landowners -- you know, they
20 can talk to the landowners, and the landowners can
21 still appeal.

22 So if they feel -- if the landowners and
23 the company feel that BIA wrongfully denied the
24 right-of-way, then, certainly, the landowners can
25 appeal, and it will go through the administrative

1 process.

2 MS. MANDAN: Okay. Final question: You
3 mentioned earlier the USPAP standards that would
4 be used to provide a market valuation for the
5 right-of-ways.

6 And I'm just wondering about -- the BIA
7 has -- in other areas, they have a USPAP
8 requirement for appraisal, as well -- and we have
9 this situation now on Fort Berthold -- and I'm
10 just wondering how BIA is going to handle it:
11 Under these proposed regulations, if you have --
12 the OST is the office, currently, that still does
13 the appraisals, correct?

14 MS. TURNER: Yes.

15 MS. DANKS: Yes.

16 MS. MANDAN: Okay. So is it possible,
17 then, for the BIA to be able to appraise the
18 right-of-way for, let's say, an oil and gas
19 purpose or a utility purpose, under fair market
20 value USPAP standards, and still appraise that
21 same land for a grazing permit purpose?

22 Because currently, USPAP standards are
23 supposedly used under the grazing permits for
24 valuation of fair market value of the land. So
25 are you going to be looking at highest and best

1 use, or -- you know, because I see a potential
2 conflict.

3 If we have a right-of-way that's in a
4 range unit that's under a grazing permit, and that
5 right-of-way has been appraised at a fair market
6 value of -- I'll just throw a number out there --
7 \$25 an acre.

8 But that same right-of-way has more
9 valuation to a pipeline company who's running, you
10 know, gas or multiple gas and oil lines through
11 that same right-of-way, how is USPAP going to be
12 applied?

13 And how is the Office -- OST going to
14 make those determinations? That's all I have.
15 Thank you.

16 MS. APPEL: Do we have other comments
17 from tribal reps?

18 MS. JULETTA BIRDBEAR: Where's the
19 answer to her question?

20 MS. APPEL: About the appraisal? We are
21 going to have to talk to the Office of Special
22 Trustee; they determine how the valuations are put
23 together.

24 So we're going to have to check with
25 them. But that's a really good point, because it

1 should be -- you would think that --

2 MS. MANDAN: Fair market value would be
3 fair market value.

4 MS. APPEL: Right. Fair market value
5 would be for the purpose that it's going to be
6 used for. So if it's a pipeline, then the fair
7 market value should be for that and not grazing.

8 MS. DANKS: I guess we don't have an
9 appraiser here, but I can tell you that, when we
10 submit the appraisal, we do provide a scope of
11 work, so it's specific -- we provide them with the
12 information on what the appraisal is for. But
13 we'll have to get OST out.

14 MS. APPEL: And maybe that's something
15 that we could codify in the regulations: That BIA
16 is going to specifically communicate with OST
17 about what the purpose --

18 MS. MANDAN: Well, just to add to that:
19 The reason I ask that question, the background
20 behind that is because, on Fort Berthold, now,
21 because we've had an explosion in energy work and
22 the installation of infrastructure and
23 right-of-ways: Well paths, roads, land lines.

24 We actually have them being installed on
25 top of federal grazing permits. So basically, the

1 land is already under lease with the federal
2 permittee, and we've got top leasing going on,
3 basically, on Fort Berthold.

4 And that land has already been paid for
5 and valued by the USPAP appraisal for grazing
6 purposes, and then we turn around, and now we need
7 to do a USPAP appraisal for fair market value for
8 the right-of-ways.

9 And we're going to meet later on today
10 about some of those issues, but one of the
11 problems we have is that the BIA is not currently
12 deducting that land from the permits.

13 So the landowner's collecting for dual
14 purposes on that -- on those properties: They're
15 being paid a grazing rental, and they're being
16 paid for the right-of-way.

17 And that is an issue that I think,
18 probably, needs to be addressed, maybe, in this
19 rule-making, as well. I don't think that, you
20 know, it's legal to do that, on behalf of the BIA.

21 Because when you put a right-of-way or a
22 pipeline in -- pipelines are different, maybe,
23 because you can still graze them after they're
24 installed -- but there's no damage payment to the
25 permittee for that, and there's no deduction in

1 the lease and the EUMs in the permit.

2 And we didn't think it was that big of
3 an issue at first, but it's turning out to be a
4 significant amount of acreage being deducted from
5 these range units now.

6 MS. DANKS: Yeah, we're meeting with the
7 tribe later on -- on that. And modification is
8 looking like it's necessary because of the oil
9 boom.

10 DR. DAVIS: I'd like to comment on
11 behalf of the Turtle Mountain Band of Chippewa.
12 In 2011, our tribe passed a resolution banning
13 fracking on our reservation. A significant amount
14 of the water that comes into our aquifer is
15 off-reservation.

16 And therefore, we are working very hard
17 with tribal members and so forth to protect the
18 water.

19 We understand that there are other
20 tribes who are considering banning fracking, and
21 the reason: It's not because of the oil; it's
22 because of the chemicals involved in the process.

23 And I think the regulations need to
24 protect the tribes who are against using chemicals
25 in the energy development process.

1 If they have laws that apply, and ban
2 fracking and chemical use in the energy
3 development, that that be honored by the Bureau of
4 Indian Affairs when your lease requests are made,
5 and not go -- I guess, go beyond the requests or
6 the laws of the tribe to grant rights to oil
7 companies.

8 MS. TURNER: Just briefly on that point:
9 The regulations at 169.008 specifically note that
10 tribal law does apply.

11 So -- and there are some limited
12 exceptions which we've already discussed here
13 today, but yes, tribal laws do apply.

14 And, you know, this certainly -- and
15 there's other requirements in the regulations that
16 is part of the application process that the
17 grantees make sure that they're complying with
18 tribal law and applicable tribal environmental
19 requirements.

20 MS. THEODORA BIRDBEAR: Yes, this is
21 Theodora Birdbear from Mandaree, North Dakota.
22 I'm wondering -- on page 51, 169.122:

23 A grant of right-of-way over Indian land
24 may include a provision, et cetera, requiring the
25 grantee to give a preference to qualified tribal

1 members, based on their political affiliation with
2 the tribe.

3 Now, what is the intent behind that, and
4 where did it come from?

5 MS. TURNER: This provision, actually,
6 is from the leasing regulations, and it actually
7 grew out of concerns that, you know, certain
8 tribes wanted to only give -- require their
9 business partners to give preference to tribal
10 members as opposed to Indian preference to members
11 of Indian tribes, generally.

12 And so, for -- I'm just giving you an
13 example: So at Navajo, the preference would be
14 to -- you know, that Navajo nation has an
15 employment -- or, a provision that says preference
16 shall be given to members of the Navajo nation and
17 not, for example, to members of, let's say, a
18 tribe from New York, for example.

19 It's recognizing that, you know, they --
20 tribes -- it's a Navajo resource, and so they want
21 to give a preference to Navajo members.

22 And so, that's what this provision is
23 attended to address: Is to say, some tribes do
24 this, and that can be incorporated in the
25 right-of-way document.

1 MS. THEODORA BIRDBEAR: Is that up to
2 interpretation, that particular sentence?

3 MS. APPEL: I think you, specifically,
4 were concerned about that political affiliation
5 phrase?

6 MS. THEODORA BIRDBEAR: Right.

7 MS. APPEL: So that, from what I
8 understand, is legal language because -- to
9 address any concerns about, basically,
10 discrimination based on race.

11 So it's pointing out that this is a
12 permissive -- permissible provision because of the
13 unique relationship that the federal government
14 has with tribes as political entities.

15 And so, tribes are entitled to allow a
16 preference to be given to their tribal members
17 because they're political entities, not because of
18 a race-based --

19 MS. THEODORA BIRDBEAR: It says,
20 "political affiliation of the tribe."

21 MS. APPEL: I see how, yeah, we could
22 clarify that.

23 MS. TURNER: That's a good point.

24 MS. APPEL: A good point. Yeah, thank
25 you.

1 MS. THEODORA BIRDBEAR: And secondly,
2 the working group of your subject experts is going
3 to be meeting again. I'm currently requesting
4 that landowners be participating in that meeting
5 to represent the interest of the landowners.

6 MS. APPEL: Thank you.

7 MR. CODY HALL: My name is Cody Hall
8 from the Cheyenne River Sioux tribe. Now, these
9 landowners from the Fort Berthold made pretty good
10 points.

11 Points, obviously, you guys got to
12 address. And a short time period isn't
13 acceptable. You know, you've giving yourself an
14 August 18th deadline.

15 But what's being told to some of our
16 people down at Cheyenne River -- you know, a lot
17 of them, they don't have the amenities, or they
18 don't have that luxury of what's happening at Fort
19 Berthold. We have a lot of our people that are
20 "hooshka," that are poor.

21 So what's being told by the BIA is that,
22 "Okay, if you sell your land, we'll promise you
23 this amount of money off of this deal, here."

24 And so a lot of people, they don't --
25 you know, they don't have anything. So if you're

1 being promised money, of course you're going to
2 say, "Oh, great, because I need that. I would
3 love that," you know. "That's going to help."

4 So some of the points that were stated
5 in here, the misuse of words, and then here you
6 are binding on a contract, and then saying, "Well,
7 guess what, you signed off on this document that
8 states you gave us this land," or, you know,
9 "states that you signed over."

10 Our people don't understand that. So
11 then they say, "Okay, well, we just got a bunch of
12 money."

13 Well, in essence, you're just, like,
14 turning things over. So I think what needs to
15 happen is: You guys have to come to different
16 reservations and explain things more in detail,
17 not just say, "Okay, let's meet in Bis," because a
18 lot of our people -- you know, we don't have
19 representatives, obviously, from my tribe here.

20 So when some people are like, you
21 know -- in fact, I got informed by a childhood
22 friend about this meeting.

23 So I made a quick call down -- because
24 I'm already doing business up here -- and I said,
25 "What questions do you guys -- you know, do the

1 people have?"

2 Well, a lot of that was, "Well, we're
3 being promised x amount of dollars if we do this,
4 if we sign off." So that's what's being told
5 there.

6 The landowners, here, up here, have the
7 definition issues. So it's kind of like a
8 snake-in-the-grass type of thing.

9 My interpretation is: Okay, here's the
10 different perspectives, here's the different views
11 from different reservations. How can we go about
12 this, you know?

13 I just see it as a forever thing that,
14 you know, you give yourself quick deadline and
15 say, "Okay. It's for us." But then what about us
16 the people, here?

17 You know, we -- I am going to go back
18 and talk to some of the people from different
19 communities, because it's not just councilpeople
20 that you speak to, or whatever.

21 Because I'll tell you right now, our
22 councilpeople don't even inform us of meetings
23 like this down in Cheyenne River. I don't know
24 what it's like with other tribes up here.

25 So we have to physically -- people from

1 the community got to get up, rise up, and say,
2 "Okay, let's attend these meetings, you know.
3 Let's get out there and let's hear things."

4 I'm just letting you know: That's
5 what's being told to our people down there, is,
6 "Okay, sign off on this. You'll get your money,
7 you know."

8 And so I think you guys need to address
9 that. You need to come in and speak. And I'm
10 saying, don't come to the council and say, "Okay,
11 here's what's got to happen," because that stuff
12 doesn't get filtered to us.

13 You need to come out in the communities
14 and meet. I don't care, man. You're not meeting
15 in a fancy place like this.

16 You might meet at an old, broken-down
17 church or something, you know. Come to our level
18 and speak with us and interact with people and
19 talk to them about this.

20 Because, like I said, if it's happening
21 in Cheyenne River, what's happening in Crow Creek,
22 you know? What's happening down in Rosebud or
23 Pine Ridge or Flandreau, you know?

24 So, you know, you speak of the Great
25 Plains. Yeah, but there's a lot of people that

1 can't afford to come right here and meet.

2 So you guys need to -- with your
3 resources, you, obviously, have better resources
4 to go and meet with the people, you know.

5 So anyway, like I said, I don't
6 represent the tribe in any way. I'm just a
7 concerned enrolled member from our tribe to say,
8 "This is what's being told to our people down
9 there." Way different than, you know, what's
10 being written down on this piece of paper, here.

11 So I'll go back and I'll talk to my
12 people and let them know, "Hey, don't sell out,"
13 because, yeah, it's great. It sounds like, "Oh,
14 you're going to be promised \$27,000 if you just
15 sign off on this paper."

16 I can tell you right now just how many
17 people are talking right now. The tires are
18 turning, saying, "We need -- we could use that
19 money, you know."

20 But then there's stuff in here that
21 these landowners talk about that's kind of like
22 the fine print, or it's not really there, or it's
23 kind of sneaky stuff, you know.

24 So anyway, this is just something that,
25 maybe -- it's a huge concern that I can see, not

1 just for the people up here, but for our people
2 down there, too: As you speak of, the Great
3 Plains as a whole, you know.

4 (Audience applauds.)

5 MS. APPEL: Do any other tribal
6 representatives want to make a comment?

7 MS. LITTLE OWL: Maybe we should
8 represent -- I mean, get people to act as a tribal
9 representative, like this woman, here (pointing):
10 Very well -- I mean, very eloquent in how she
11 spoke about everything.

12 MR. BIRDBEAR: Can you hear me? My name
13 is Roger Birdbear. I'm the interim chairman for
14 the Landowners Association. I missed some of the
15 beginning, but I heard some mention about tribal
16 authority over these regulations.

17 We're opposed to the tribe regulating
18 allotted lands. The Supreme Court decision called
19 A-1 Contractors said anything alienating is not
20 subject to tribal jurisdiction.

21 So allotted lands, homesteaded lands,
22 and lands given through right-of-ways are not
23 subject to tribes' jurisdiction. The tribes don't
24 have the capability, nor do they have the same
25 interest.

1 That guy back there that just told you
2 why he can't depend on the tribes proves this
3 epidemic problem. You are our trustee -- us
4 allotted Indians. You're our trustee.

5 You have to watch out for us. You can't
6 let the tribes run roughshod over us -- I heard a
7 regional director say that once before -- and they
8 have been.

9 They are arbitrary and capricious.
10 They're interfering with our rights to our revenue
11 while you sit there and do nothing about it.

12 Allotted lands are not tribal lands.
13 Your duty is to maximize that revenue for us. We
14 can't depend on the tribes. It's been proven
15 since 1936 at Fort Berthold.

16 So if you allow the tribes to any right
17 to interfere with us, you know, under Hodel --
18 that Supreme Court decision, Hodel v. Irving --
19 that it's going to be a Fifth Amendment taking.

20 And that's going to be a legal basis
21 against the BIA for allowing this to happen, this
22 mismanagement of trust and responsibility to us,
23 the beneficiaries. I gave you two legal bases
24 right now why they shouldn't.

25 And that guy who just spoke before me,

1 he told you factually what happens: They don't
2 tell what's going on, they have secret meetings,
3 and they're only watching out for themselves.

4 There's a lot of controversy at Fort
5 Berthold right now, and the controversy is Fifth
6 Amendment taking.

7 Tribes have no right over allotted
8 lands. But the Bureau says, "Well, we got to see
9 what the tribe wants."

10 And I'm just speaking candidly, and
11 it's -- for those of you that went to law school,
12 you know that's a Fifth Amendment taking.

13 The only reason it's not -- nobody
14 brings it up is because nobody's sued the BIA yet.
15 There's a lot of Cobell claims still to come
16 because of this mismanagement.

17 And for that reason, us landowners are
18 opposed to any tribal right to regulate allotted
19 lands.

20 Right now, there's an equal protection
21 problem. You don't -- you recognize there's no
22 right on fee lands. We're both alienated
23 right-of-ways: Fee lands and allotted.

24 But for us, you might let the tribes do
25 it. You've violated the right-of-way easements.

1 You say that tribe can't regulate right-of-ways
2 under the A-1 Contractor decision.

3 And under Montana use, it said what
4 their jurisdiction is, and they're going outside.
5 Right now, there are Fifth Amendment claims
6 pending because of this tribal interference. So I
7 wanted to point that out.

8 The other question I had was: Who
9 initiated this revision to this regulation? Was
10 it Industry, or was it Tribe?

11 Because nobody asked us, the
12 beneficiaries. And I'd like to know that. Who
13 initiated this process? Can someone tell me?

14 MS. APPEL: Sure. Ultimately, it was
15 the Secretary of the Interior who determined that
16 this would be the next step in the Indian -- the
17 improvement of Indian Trust Management Regulation
18 Reform.

19 That reform began back in 2005-2006.
20 There was a department-wide effort to take a look
21 at all the trust management processes and, as part
22 of that, they identified that many of these
23 regulations were sorely out-of-date.

24 So among the ones that have been updated
25 so far are the probate regulations and then the

1 leasing regulations, as we've talked about.

2 And because the leasing regulations --
3 rights-of-way are, sort of, a complimentary piece
4 of that, we heard a lot during consultations of
5 the leasing regulations that the rights-of-way
6 really should be next in the priority list.

7 So the Secretary determined that the
8 rights-of-way were -- would be our next area of
9 focus, and the land management regulations.

10 MR. BIRDBEAR: Oh, okay. You know,
11 under Babbitt, they ruled that Indian Land
12 Consolidation Act unconstitutional, and now we're
13 pushing for (inaudible -- sounded like "April")
14 being unconstitutional because that's all it does:
15 It takes away our right to give away our land.
16 Those are my comments that I want to make. Thank
17 you.

18 MS. APPEL: Thank you.

19 (Audience applauds.)

20 MS. APPEL: So since we have a lull, do
21 we want to take a break and reconvene in ten
22 minutes?

23 AUDIENCE: Yes.

24 MS. APPEL: Yes? I hear "yes." All
25 right. So why don't we come back in ten minutes,

1 and we'll pick up where we left off.

2 (Off the record from 10:17 a.m. until
3 10:33 a.m.)

4 MS. APPEL: All right, let's get started
5 again. Looks like we have someone ready to give a
6 comment.

7 MS. KARY: Yeah. My name is Marilyn
8 Kary, and I'm a member of the Active Citizens for
9 Tribal Truth from Standing Rock, and I'm a
10 landowner. I found out about this meeting through
11 Facebook.

12 AUDIENCE MEMBER: Yup. That's how I
13 found out about it, too.

14 MS. KARY: So here I am. And I look
15 around, and there's no one else here from Standing
16 Rock, you know. And it's a shame. It's really a
17 shame.

18 So I think that I agree with the people
19 who stated that you should come to the
20 reservations and speak to the landowners because
21 we need to be heard, too.

22 And now, if I wasn't on Facebook, I
23 wouldn't be here. There would be no one from
24 Standing Rock here.

25 So please take that back for me: That I

1 think you need to meet on the reservations with
2 the landowners. Thank you.

3 (Audience applauds.)

4 MS. APPEL: Thank you. And if you have
5 suggestions about how we can better publicize
6 these meetings -- we sent letters to each of the
7 tribal leaders. We had --

8 MS. JULETTA BIRDBEAR: No, that's the
9 problem.

10 MS. APPEL: Yeah.

11 AUDIENCE MEMBER: It is the landowners
12 that need to be notified.

13 MS. APPEL: And if you have a, you know,
14 suggestion for how we can better reach out to the
15 landowners about these --

16 MS. JULETTA BIRDBEAR: You know, on Fort
17 Berthold, when the pipeline company and the oil
18 company needed to find us, they found us.

19 AUDIENCE MEMBER: Mm-hmm. Yes, that's
20 true.

21 MS. JULETTA BIRDBEAR: Shouldn't be any
22 different for the local Bureau, sitting on Fort
23 Berthold permanently, to find us.

24 MS. LITTLE OWL: And what -- how much
25 does it cost to put an ad in the paper? Because

1 we had to look in the Facebook, and somebody was
2 like, "Cheryl, there's a meeting."

3 And I found that out last night, so --
4 and we're --

5 MS. APPEL: Yeah, I --

6 MS. LITTLE OWL: We didn't get any
7 papers or any letters of notification, which is,
8 kind of -- really unprofessional, considering you
9 guys -- I know there's not a lot of money, but, I
10 mean, they can afford to send us something. Put
11 an article in the paper.

12 MS. APPEL: So that's a good suggestion:
13 Article in the paper. We are making everything
14 available on the website, I encourage everyone to
15 routinely check the BIA website for information.

16 MS. LITTLE OWL: It's, like -- not
17 everybody's online, on Facebook.

18 AUDIENCE MEMBER: How many reservations
19 have access to that? You know, even talking about
20 access to an Internet -- so how are we supposed to
21 access BIA or Facebook or --

22 MS. LITTLE OWL: Or even a newspaper,
23 honestly? When I was living in Belcourt, I mean,
24 I don't think we had anybody coming to our door
25 with a newspaper.

1 So if you guys were to send out a letter
2 to the landowners -- I know we got those little
3 checks from New Town. I got that in the mail; I
4 could have got a letter in there that said, "We're
5 having a meeting," you know.

6 MS. APPEL: That's -- that's a --
7 actually --

8 MS. LITTLE OWL: I would have brought
9 the doughnuts had I known about it earlier.

10 MS. APPEL: That's a good idea,
11 actually, to include, like, a flyer in letters
12 that you're getting anyway from the Bureau.

13 MS. LITTLE OWL: Yup.

14 MS. JULETTA BIRDBEAR: You know, for the
15 Bureau, there's permit imprint mail, which is the
16 very least expensive mail you can use through the
17 postal service: Mass mailing.

18 There's no reasons not to send a notice
19 to the landowners on Fort Berthold, Standing
20 Rock -- all the surrounding landowners, here.

21 And the other other reason why it needs
22 to be done, is: We're the landowners. You're
23 notifying everyone else except us. We're the
24 landowners.

25 MS. DANKS: You're thinking MHA Times?

1 We're also talking that the Interior's on
2 Facebook, but I don't know that Interior posted
3 that on Facebook.

4 MS. JULETTA BIRDBEAR: Not everyone has
5 access to the Internet.

6 MS. DANKS: But not everybody has
7 Internet, so --

8 MS. JULETTA BIRDBEAR: No.

9 MS. DANKS: -- we're just thinking about
10 the other options.

11 MS. LITTLE OWL: We were all standing in
12 little groups around here, trying to make our way
13 to visit everybody. And we were talking, and the
14 only way -- you guys are asking for ideas on how
15 to better communicate with the public, talking
16 about the newspaper, talking about Facebook.

17 If you were to get one person to be a
18 spokesperson for the tribe, like this woman right
19 here.

20 I told her I was going to get up here
21 and pray, "Heavenly father, please bring this
22 woman to speak for us on our behalf."

23 So I'm doing it. But we need somebody
24 who's knowledgeable in the terminology that you
25 guys are offering.

1 My husband's got many letters from
2 people that are saying, "Okay, we're going to give
3 you \$1,000 if you sign this paper," so what has he
4 been doing? He's been signing the paper.

5 Did he have knowledge of what he was
6 signing? Not really, because the terminology is
7 that of an attorney.

8 And I don't think -- as long as I've
9 known him, he never went to college to be an
10 attorney. So the terminology sucked for him.

11 Because of that, who knows, you know,
12 how much -- how many other people have been taken
13 advantage of by the terminology. If we could get
14 someone, like the Sioux tribe talked about, get
15 someone to go to their tribes.

16 And it's not something that we're just
17 asking for; it's something that's a need. It's
18 like, every day, we need to eat; every day we need
19 to drink to survive. We need to have the
20 knowledge that you guys have.

21 And the only way we're going to get it
22 is if you guys have a representative or somebody
23 that's going to care enough about us and what
24 we're signing that you come out and share your
25 knowledge with us. That's all we're asking: Come

1 and share what you know with us.

2 Because, I mean, we're just -- I mean,
3 we're like children when it comes to that legal
4 jargon. We're like, "Well, what does this mean,
5 and what does that mean?"

6 I went to college for nursing, and I
7 didn't understand half of what was said on there.
8 And it was all legal language.

9 But if we could get a representative
10 from each tribe, like her. She was very
11 well-read; she did her homework. I never seen any
12 of this paper until we sat down, so I don't know
13 what was going on in there.

14 And had it been sent out to us, we would
15 have all had the opportunity to take a look at it,
16 read it, make our notes, and come in here with a
17 little bit of knowledge behind us. We all came in
18 here just kind of, like, not knowing what's going
19 on.

20 If I didn't look at my Facebook before I
21 went to bed, I would not have known that there was
22 this meeting today. I think that's
23 unprofessional.

24 And all of you people up there look like
25 professional people. I don't see any dummies

1 sitting out there.

2 So, I mean, somebody could have put
3 something out. I don't know who's in charge of
4 your public relations, but maybe they should be
5 contacted because of this.

6 But like I said, I don't know if every
7 tribe that's being represented in here -- we have
8 Turtle Mountains, we have the Standing Rock Sioux
9 tribe, we have -- what was your tribe?

10 MR. CODY HALL: Cheyenne River.

11 MS. LITTLE OWL: The Cheyenne River, and
12 I'm not sure who else is here, but they are acting
13 as representatives without even knowing it because
14 they are here speaking on behalf of their people.

15 This woman here, I believe she's --
16 well, these two women, here, spoke for Three
17 Affiliated.

18 And if we could get someone nominated
19 like that for each tribe, the whole tribe would be
20 represented; you know what I mean? We would know
21 who to talk to.

22 If we have a question, go up to this
23 woman. Say, "This is how we're feeling about
24 this. This is the questions we'd like to ask."

25 Because not everybody wants to get up

1 and speak. My husband can't be dragged up here to
2 say a word, but I'm sure he has a thousand
3 questions, and they were all asked by this lady
4 when she got up here.

5 He's like, "That's the question I wanted
6 to ask. Yes, she asked everything I was going to
7 ask." So -- yeah, so I applaud her.

8 (Audience applauds.)

9 MS. LITTLE OWL: What was her name?
10 What was your name?

11 MS. JULETTA BIRDBEAR: Juletta.

12 MS. LITTLE OWL: This is Juletta
13 Birdbear. But anyway, I applaud her for asking
14 all these really good questions.

15 And I thank you guys for listening to
16 me. I'm sorry I sound like a crazy lady, but
17 that's all I'm asking, is: Just listen to us.
18 Come out and tell us, you know, exactly what
19 you're putting down. Thank you.

20 MS. APPEL: Thank you.

21 (Audience applauds.)

22 MR. CODY HALL: Cody Hall again. Say,
23 what I forgot to mention the first time I talked
24 to you guys: When we look at the BIA as a whole,
25 okay, there's so much wrong. And we're trying to

1 make it right, you know. That's what I was
2 saying.

3 A lot of our people have to activate
4 now. We're telling people, "You got to get up,
5 make a movement, you know."

6 So when we do that, you guys label us,
7 and within -- those that work within the tribe,
8 too, that look more Native, okay, than the
9 non-Native, that work within the BIAs and stuff --
10 then we're labeled AIM activists or we're labeled
11 militants.

12 No, we're not. We're just standing up
13 because enough's enough. We all know, from
14 different tribes, here, we have scandals. We have
15 mishaps that are going on.

16 I can tell you right now: In our tribe,
17 our superintendent is one of those guys that
18 thinks he's a czar. But he's not.

19 My mother who worked at the school,
20 there, found a misuse of funds between BIA and
21 BIE. She caught it, so she brought it up. She
22 got fired for that, because she was standing up
23 for our people.

24 So I go and I questioned the
25 superintendent because all -- there was four main

1 people: There was the superintendent of our
2 tribe, it was a lady -- or, the superintendent's
3 wife that signed off on this transfer.

4 Well, see, there's a lot of that stuff.
5 So we come out to you, and we try to talk to you
6 guys about it, but yet you look at us like, "Oh,
7 that's just kind of crazy stuff, or whatever."
8 No, it's not. You know, we have people losing
9 jobs over standing up for things.

10 You know, Ms. Birdbear talked about
11 2014. We're in this day and age, now, where we're
12 still coming in amuck. And you guys sitting here
13 are supposed to help us, be interpreters.

14 And I always think -- I was told
15 old-school stories by my grandfather, who was a
16 chairman down there, about how we worked as a
17 people as a whole. Even BIA people came in and
18 sat down.

19 So I was thinking of those old-school
20 methods, and I think of nowadays where, you know,
21 money's a corrupt thing, and money's the level of
22 all things. It statutes who you are, you know.
23 That's what you go by.

24 I don't believe in that stuff. So
25 anyway, you know, yeah, it may sound like speaking

1 of craziness or whatever. But no, this is real
2 talk.

3 I'll tell you right now, when I spoke
4 against the superintendent, and I questioned him
5 on it, and I said, "You allowed this transfer.
6 You pulled funds. You pulled people's salaries to
7 make it look like that's where a million dollars
8 was going to. Where did it go? We caught the
9 scandal."

10 Well, guess what? When I brought it up
11 to him, I'm no longer on the records on Cheyenne
12 River as an enrolled member.

13 Because I had to fill out some
14 paperwork, so I went to go get a copy of my tribal
15 enrollment. "Cody Hall" isn't found on Cheyenne
16 River anymore.

17 I called Aberdeen. They won't issue
18 anything. You have to file certain, you know,
19 procedures in order to find records. You got to
20 pay \$50 in order to find your record.

21 I said -- so then she's telling me,
22 "Okay, talk to the Records Department on Cheyenne
23 River."

24 I did. I'm not found because I stood up
25 for what was right. So you guys need to hear this

1 stuff, you know. And you might take it and say,
2 "Eh, whatever. That's just how it is."

3 We got business at hand, so that's just
4 a fallen issue, you know. But I'm telling you:
5 This is real talk. This is real people.

6 We're activating, you know. Yeah, we
7 don't have some people that don't understand that
8 legal talk, you know.

9 But I've gone and got educated off the
10 reservation and came back, and I wanted to empower
11 the people, but yet I get blasted. So here I am.

12 You guys, you know, within BIA, you have
13 people that have GEDs that are working versus
14 those of us that have the proper education, and
15 you allow that because of those things, you know.

16 "Oh, just keep it hush-hush. That's
17 right. I'm looking out for my family, so we're
18 keeping him in there."

19 Yeah, they got a GED; they're not going
20 to say anything. "Oh, you got this gentleman over
21 here who's got a college education; he's got
22 degrees. Well, we'll pass him up and keep this
23 person in here."

24 That's what's happening at Cheyenne
25 River. Is it happening at Fort Berthold? Is it

1 happening at Standing Rock? It's happening all
2 over Indian Country. You guys need to plug in to
3 that.

4 But I know I'll get hate, and I'm okay
5 with that. I call people out. Same thing down in
6 Pine Ridge when we get a protest for one of our
7 members, and they hired this lady.

8 The regional officer said, "She's
9 Indian." That makes her okay? Well, just because
10 you tan a little differently, that's okay? She
11 didn't know what was going on; she was just a
12 puppet.

13 So that's what, you know, we call out.
14 So guess what? I might be called a militant, and
15 I might be called, you know, something. I'm not.
16 I'm just sick and tired of all this. We got to
17 stand up.

18 So you guys may hear this. I'm just one
19 out of hundreds and thousands that are just
20 saying, "Enough is enough," you know.

21 And, like I said, those are just prime
22 examples. I put myself out there, so, yeah, I'm
23 not enrolled anymore at Cheyenne River.

24 I'm not even found on the rolls because
25 I stood up for what needed to be done for our

1 people.

2 You guys need to take that back, and
3 say, "Hey, there's some craziness going on." You
4 know, we don't have our representatives here
5 speaking, you know, standing up, because they
6 don't want to.

7 All they care about is getting that
8 check, heading out, or passing resolutions under
9 the table and not letting the people know.

10 Like I said, I'm just telling you what
11 Cheyenne River's doing. There's more people that
12 are going to come out and talk about Fort
13 Berthold, Standing Rock, you know.

14 We are the proud Seven Bands of the
15 Ochethi Sakowin. We still believe in our treaty
16 rights. I don't know if you guys still believe in
17 your treaty rights; we still do.

18 But yet that gets overlooked. Our
19 council, our people, who say, "Oh, okay" -- even
20 BIA officials that work down at Cheyenne River
21 say, "That's old law. Nah, we don't need to
22 listen to that."

23 That's supreme law: The treaty, 1868.
24 That's the supreme law. "Well, just worry about
25 that old law. That's old scriptures."

1 Hello, the U.S. still goes by the
2 Constitution, do they not? How many years ago was
3 that written? But they say, "Okay, well, we just
4 look at Indian people as" -- in the words of Ted
5 Nugent -- "varmint. Low-lives. Dirty." That's
6 how they still view us.

7 So anyway, I'm sorry. It may sound like
8 I'm rambling, but you know what? Like I said, you
9 need to take that back to the higher-ups in D.C.
10 and say -- because you guys have unlimited caps on
11 resources.

12 You can come out here and travel. Look
13 at what you're doing: You're probably traveling
14 to Arizona tomorrow. So you can't tell me that
15 there's a certain amount of -- you know, limited
16 amount of funds and resources.

17 It's happening. You guys, you know -- I
18 can't fly down there. I'm sorry but, you know,
19 that's just the realness of it, you know.

20 So I'll probably get branded, and I'll
21 probably, you know, some of you will get called
22 down and say, "Hey, one of your tribal members by
23 the name of Cody Hall stopped up here and talked
24 up here and, kind of, raised the roof; got mad."

25 Whatever. That's fine, you know.

1 Because they're too chicken to talk. But you
2 know, when I walk into the little LTM store down
3 there, they get scared. They find an excuse to
4 turn away. They don't want to speak. "Oh, that's
5 the truth coming." They look away.

6 So I'm just letting you know, you know:
7 That's what you can take with you. I'm frustrated
8 to the gills on it so, like I said, I need to
9 speak my mind on it for you guys to take home,
10 take to your higher-ups, you know.

11 And I know, I can go off -- I see some
12 of that documents, here. One of those it says
13 signed off or written by Kevin Washburn. I've
14 seen Kevin Washburn make promises in Indian
15 Country, and he reneged.

16 So, you know what? Hey. It's
17 happening. It's evident. Our people now are
18 plugging in. I call it "Red Nations Rising."
19 You're damn right it is. It's about time. Thank
20 you.

21 (Audience applauds.)

22 MR. BIRDBEAR: Another comment I had
23 was, I alluded to it -- or, I mentioned it: That
24 the beneficiaries really should write these
25 regulations to benefit us.

1 I just finished two years on the ONRR
2 rule-making committee on oil wealth evaluation,
3 and they made attempts to take away the price of
4 our oil. There was an attempt. And you can speak
5 with the director, Greg Gould, or else Deborah
6 Tschudy.

7 But the thing about ONRR, I'll say this
8 for them: They let allottees, the Indian mineral
9 owners, be on that rule-making committee. That's
10 something that needs to be looked at.

11 Indian beneficiaries have been ignored
12 too long, and we're the ones that suffer. We have
13 no money, and we have to live in poverty. But my
14 comment is: We should write this regulation.

15 AUDIENCE MEMBER: Mm-hmm.

16 MR. BIRDBEAR: We've got a good example
17 right now. There was a production water
18 contamination, and my guess is there was a
19 right-of-way issued by the Bureau of Indian
20 Affairs for that. I could be wrong, but my guess
21 was there was one.

22 Now, is the Department of Interior, the
23 BIA, looking out for the allottees' land that was
24 contaminated?

25 You really need to ask yourself that,

1 because you know, for those few of us who
2 understand this -- who will pursue our claim for
3 trespass and for loss, not just for grazing, but
4 for the value of that land -- while you let that
5 production water contamination go on and nobody's
6 paying those landowners, those Indian landowners,
7 for that loss, you let the tribe tell other Indian
8 landowners what they can and can't do with their
9 own land, and their own water.

10 I just heard recently, a mobile tower
11 wanted to go on this Indian landowner's property,
12 and TERO came and said, "You can't come here
13 unless we approve of it." You know that is a
14 Fifth Amendment taking.

15 That tribe had no right to interfere
16 with the landowner and a buyer. They had no
17 right, but they did. That was arbitrary and
18 capricious.

19 There was no fact and no law for that
20 TERO person to go to that mobile tower
21 representative. Nothing. That's what's going on.

22 While you let this production water
23 contamination get worse, that landowner may not
24 even know that happened to her land yet. But
25 you're letting the tribes interfere.

1 Therefore, my comment, again, is: Us
2 Indians, us real ones, who own this land, we
3 should write this regulation, just like ONRR let
4 us.

5 There was some Indian mineral owners
6 from Oklahoma and from other areas. They let
7 three representatives be on that committee, that
8 rule-making committee. I was one of them.

9 So you need to let us -- this deadline
10 of August 18th is too short. If it does go in,
11 maybe there could be an injunction filed to stop
12 this until we say something.

13 Because the tribe isn't watching out for
14 us. The tribes are our worst enemy on the
15 reservation. They pick and chose who they want to
16 help, and who they don't want to help.

17 And they don't have that right. But
18 you, as our ben- -- as our trustee, is supposed to
19 protect us against that.

20 Right now, the Garrison Dam is flooding
21 allotted lands, and you do nothing about that.
22 That's a violation. That's a trespass. They
23 don't even have an easement to have that
24 Garrison -- that water on our land now, today.

25 I sent in a request in May. You might

1 think that's not long, but they've been flooding
2 my land since 1949. I mean, that -- that's
3 unreasonable.

4 That's why you really need to consider
5 us. And as far as this tribal consultation goes,
6 the Bureau really needs to look at what they're
7 consulting about.

8 At Fort Berthold, if you're talking
9 about land, it can't be with the tribe. Most of
10 you know that entire reservation was either
11 allotted or homesteaded. So there was no tribal
12 land.

13 So we need to know these: What are our
14 protections, here, in these right-of-ways? Are
15 you going to let a million-gallon production water
16 contamination go unaddressed? Or are you our
17 trustee?

18 There's a Mitchell case that says you
19 have to watch out for us. And if you don't, we're
20 entitled to money.

21 The DAO said they can't put facts and
22 figures together to say what's going on, what's
23 wrong with oil and gas at Fort Berthold. That
24 just came out in April, I think.

25 So at a minimum, you should consider us

1 when you conduct these consultations. If you want
2 to talk to the tribe about travel, about how much
3 their salaries could be, that's all right. But us
4 landowners, that affects us.

5 We have a TERO that told this mobile
6 tower, "You can't come here," with no right today;
7 with no reason, other than that it's a different
8 family member. It's arbitrary.

9 So you need to consider what -- who
10 you're representing. And you're representing us,
11 the landowners. You have a duty of loyalty,
12 skill, prudence, and care to us.

13 So I had to say this because right now,
14 the abuses being committed by the tribe and the
15 Bureau looking the other way are going on. And
16 we, as a result, have no money. And that is a
17 Fifth Amendment claim. That was all I had to say.

18 MS. APPEL: Thank you.

19 (Audience applauds.)

20 MR. VOCU: My name is Lane Vocu; I'm an
21 enrolled member of the Three Affiliated Tribes.
22 And I'm not going to get up here and pretend to
23 understand the document you guys have provided us
24 with.

25 I do understand parts of it, but I think

1 the problem I'd just like to reinforce that I
2 think everyone here -- the landowners, and, you
3 know, Mr. Hall back there -- you provided notices
4 to our BIA representatives, but they did not
5 communicate with our landowners.

6 Or also, you know, you provided notices
7 to our council, and stuff like that. In
8 situations like this, they don't inform us.

9 So I'm just getting up here to comment
10 on -- I'd like to reinforce her statement that we
11 need representatives like her (pointing) who are
12 specifically designed to help us.

13 Or reinforce -- you know, taking into
14 consideration -- I know Cheyenne River Sioux is
15 going through an election process. We're going
16 through an election process.

17 And, you know, it's just upsetting that
18 you guys don't think about things like that,
19 because we had four councilmembers up for
20 re-election.

21 That could change -- I mean, that's our
22 majority. For all we know, in three to four
23 months, there's going to be a completely different
24 movement. They might not be for energy standards.

25 But deadlines like this that show up on

1 the 18th, you know, that stops our ability to, you
2 know, make an informed decision with our
3 representatives.

4 I have to come in here and speak, and
5 I'm obviously really nervous, because I don't
6 understand what I'm speaking on.

7 But I just wanted to get up here and
8 comment on that because I feel the more of us that
9 get up here and talk, the better chance of you,
10 you know, really taking that into consideration.
11 Thanks.

12 (Audience applauds.)

13 MS. PACKUHEA: Elise Packuhea, Fort
14 Berthold landowner. As the comments that you
15 heard today, in many ways, the right-of-way -- the
16 proposed rule, 25 CFR 169 -- is taking away the
17 rights of the landowner. It's like negative
18 history repeating itself.

19 It also states that you plan to go
20 across the other reservations: The Navajos,
21 Alaska, New York; is that not true? That you're
22 making the same proposed CFR regulation changes?

23 MS. APPEL: (Nods head.)

24 MS. PACKUHEA: I would like to know
25 their stand on this, as well. If there's any way

1 that that could be, that North Dakota landowners
2 would find out their feelings about this, as well,
3 because I'm sure they're going to concur with the
4 landowners.

5 And also, it just seems like this is
6 eminent domain in a fancy term.

7 (Audience applauds.)

8 MS. APPEL: We are making all the
9 comments that we receive on the regulations
10 available on the website.

11 So if you go to the "BIA.gov" page,
12 there will be a link with the comments and stuff
13 that were discussed.

14 MS. PACKUHEA: I think what would be
15 helpful would be to network with the other tribes,
16 as well. And then -- like we said before, a lot
17 of them don't have Internet access.

18 MS. APPEL: Do we have anyone who -- oh,
19 great.

20 MS. THEODORA BIRDBEAR: Yeah, my name is
21 Theodora Birdbear, Mandaree. On page 32, it says,
22 "For purposes of appeals from BIA decisions,
23 'interested party' is defined as any person whose
24 own direct economic interest is adversely affected
25 by an action or decision."

1 From the landowner's perspective, I want
2 my trustee to tell me: Who all is excluded in
3 this definition that could benefit the land- --
4 the individual Indian landowner? Who's excluded
5 in this definition and why?

6 MS. APPEL: Would you mind telling us
7 what the section -- I don't think that our page
8 numbers are matching up.

9 MS. THEODORA BIRDBEAR: It's 169.011.

10 MS. APPEL: Okay, great. Thank you.

11 MS. TURNER: Sure. This definition of
12 "interested party" is, again, from the leasing
13 regulations.

14 And it was a comment that we got in the
15 leasing context to try to limit who can appeal
16 from BIA decisions so that, for example, someone
17 concerned about environment -- purely
18 environmental issues is not going to be covered by
19 this definition because it refers to "own direct
20 economic interest."

21 So, like, a landowner would clearly be
22 covered by this provision. But, you know, someone
23 in New York who has environmental issues with
24 fracking in North Dakota isn't going to be covered
25 by this definition.

1 MS. JULETTA BIRDBEAR: You're
2 assuming -- you're presuming that Indian
3 landowners who have maintained control of their
4 land and have not even considered relinquishing
5 that land, you are presuming they have no
6 environmental conditions to that land?

7 How presumptuous of you to say that.
8 The reason we hold onto that land is to protect
9 it.

10 MS. TURNER: Yeah.

11 MS. JULETTA BIRDBEAR: That is why we
12 are speaking.

13 MS. TURNER: And so, this regulation is
14 not intended to exclude landowners. As I said,
15 "interested party" does, necessarily, include a
16 landowner.

17 It's, rather, that if someone's not a
18 landowner and is, you know, an environmentalist
19 from New York, this regulation is excluding them
20 from the scope of review. That said, this is only
21 a proposed rule. And so --

22 MS. JULETTA BIRDBEAR: That said, I have
23 an interest to protect my land. If I choose to
24 get help from an outside source, I will do that,
25 and that person or organization needs to be

1 recognized.

2 MS. THEODORA BIRDBEAR: Yes, I object to
3 that -- the language in that, because I believe
4 that's definitely an exclusion which is
5 undermining the landowner.

6 So I really have questions about the
7 intention behind that: Who put it in, why they
8 put it in.

9 Again, this shows that the Bureau has
10 failed to include the landowner interests in these
11 rights-of-way across landowner lands.

12 MS. TURNER: And this -- this provision
13 is reflecting, in part, existing IBIA -- that's
14 the Interior Board of Indian Appeals -- and
15 federal court case law on who may appeal and who
16 may not appeal.

17 And so -- but, certainly, these
18 regulations can -- you know, we, certainly, can
19 change the definition.

20 And so, we're interested in your views
21 on this. And, as I said, this is just a proposed
22 rule.

23 MS. JULETTA BIRDBEAR: I think this goes
24 back to this statement that Roger Birdbear made:
25 The landowners need to be at that table,

1 redrafting this document, to satisfy the interest
2 of the Indian landowner.

3 AUDIENCE MEMBER: For the record.

4 MS. THEODORA BIRDBEAR: Yes, this was
5 clearly written with the industry in mind and to
6 expedite the Bureau's processing of the
7 rights-of-way. There was -- the landowners'
8 interests were not included in this document.

9 MS. TURNER: And just on that point,
10 this provision was actually added, as I said,
11 through the consultation process on the leasing
12 rights.

13 And we had received comments from
14 landowners they were concerned that, if they
15 wanted their right-of-way approved, and they
16 wanted to get the rental income -- or, you know,
17 they wanted their right-of-way approved, and that
18 just anyone could come up and could, without an
19 economic interest in that, try to block that
20 right-of-way or that -- in the leasing context, it
21 was a lease -- from going forward.

22 And so this was, actually, not adopted
23 to address Industry concerns, but was, rather,
24 initially adopted to address landowner concerns.

25 So your comment that it could actually

1 undermine landowner authority over their land is
2 very helpful to us, but I can assure you, that was
3 not the original intent.

4 MS. THEODORA BIRDBEAR: Well, we are
5 concerned about that. You've received our message
6 about that, and we want you to address that in
7 language. And we want to see that language in
8 advance of any deadline -- well in advance of any
9 deadline.

10 We're not -- you know, I'm just an
11 individual tribal member. I'm not an attorney.
12 But I'm concerned about this.

13 I know that this is the language,
14 here -- a lot of it is used by attorneys. But,
15 you know, we're astute enough, I think, to guess
16 that there's some implications for what you are
17 proposing. And these implications are not in the
18 best interest of the individual Indian landowner.

19 On the appeals -- I mean -- I'm sorry.
20 The second item is: You talked about appraisals
21 and valuations.

22 Are you proposing to use the same mass
23 appraisal idea that is -- was proposed for the
24 Cobell land settlement? Is the mass appraisals a
25 part of this process, in this language?

1 MS. APPEL: No. Not as far as I
2 understand.

3 MS. THEODORA BIRDBEAR: Can it be? I
4 don't support it, but I want to know: Have you
5 considered the full implications of the language
6 you've drafted?

7 MS. DANKS: 25 CFR 169.111: It does say
8 "market analysis." And so, if you're opposed to
9 that --

10 MS. THEODORA BIRDBEAR: I'm talking
11 about mass appraisals.

12 MS. DANKS: Yeah, that's a mass market
13 analysis, would be the --

14 MS. THEODORA BIRDBEAR: I guess I object
15 to the mass appraisals.

16 MS. DANKS: Okay. Then I wanted to make
17 sure to point that out.

18 MS. THEODORA BIRDBEAR: So you're saying
19 that mass appraisals are a part of this valuation
20 process? Could be?

21 MS. DANKS: A market analysis is
22 included in here, which is -- would be the whole.
23 So if you're opposed to it, then --

24 MS. THEODORA BIRDBEAR: I'm opposed to
25 Cobell mass appraisals.

1 MS. DANKS: -- we'll take your comment.
2 Okay. Well, duly noted.

3 MS. THEODORA BIRDBEAR: On page 20 --

4 MS. DANKS: And I want to say, this is
5 good because we -- generally, we ask for specific
6 language, if you have any specific language you
7 want to submit.

8 MS. THEODORA BIRDBEAR: Well, I guess
9 we're looking at the implications of the language
10 you submitted, because I think -- I'm wondering
11 who thought of this, and what was the full intent
12 of this.

13 On page 20 -- that would be 169.002 --
14 and this has to do with definitions -- what -- the
15 definition for immediate family:

16 In absence of a definition under
17 applicable tribal law, such and such, a spouse,
18 brother, sister, aunt, uncle, lineal ancestor,
19 lineal descendent, or member of the household.

20 What is -- who is the member of the
21 household? Who -- how is that interpreted?

22 MS. TURNER: The intent of the
23 definition of immediate family was intended to be
24 as broad as possible and to defer, where
25 applicable, to, you know, tribal law definitions

1 of immediate family.

2 But where there isn't a tribal
3 definition, then this list was intended to, you
4 know, be very broad and encompass different types
5 of relationships.

6 So recognizing that, you know, a
7 household may consist of more than just husband,
8 wife, children.

9 And so it was intended to be broad. So
10 there's no specific definition here. And if you'd
11 like us to provide more guidance on that, we're
12 happy to do so, but the intent was to be very
13 broad.

14 MS. THEODORA BIRDBEAR: Well, it could
15 be anybody in that household, then. It doesn't
16 necessarily have to be a biological parent --

17 MS. TURNER: Correct.

18 MS. THEODORA BIRDBEAR: -- biological
19 person.

20 MS. TURNER: Correct.

21 MS. THEODORA BIRDBEAR: Is that the
22 essence of what you're saying?

23 MS. TURNER: Yes. If it's part of the
24 household, as I said, it doesn't have to be
25 somebody -- you know, a blood-brother or, you

1 know, blood-parent; it can be much broader than
2 that.

3 MS. THEODORA BIRDBEAR: I guess I have
4 questions about that, but I will need to reread
5 where you're referencing that in this document.

6 The last question, I think, that I had
7 was -- and I'm glad Elise brought it up -- about
8 the eminent domain.

9 What role does eminent domain have on
10 allottee lands in regards to these right-of-way
11 regulations?

12 MS. TURNER: I think what we've heard
13 today is concern that these regulations could be
14 somehow illegally taking landowners' interests in
15 their land, and I can assure you that's not the
16 intent of these regulations.

17 These regulations are implementing our
18 statutory authority to approve right-of-way
19 grants.

20 And so, you know, were not intended
21 to -- we're not intending to take interests
22 without compensation.

23 As I said, they're just implementing
24 statutory authority, and the intent behind the
25 regs was actually to give a lot of deference to

1 landowner determinations regarding the use of
2 their land, whether it be, you know, through
3 requiring consent of the landowners before
4 approving right-of-way, and whether it be through
5 requiring landowners' consent with compensation
6 provisions.

7 And so we're not intending to, as I
8 said, take landowners' property interests without
9 consent. They are, in fact, intended to protect
10 landowners.

11 And so we're interested in whether --
12 and you've given us a lot of reasons today why you
13 think that they're not doing so, and we'll
14 consider those. But that was certainly not the
15 intent.

16 MS. THEODORA BIRDBEAR: What is the role
17 of eminent domain on allottee land right now?

18 MR. WINTER: There is none.

19 AUDIENCE MEMBER: Thank you.

20 MS. APPEL: I mean, I -- I don't know.
21 I don't know. That's --

22 MS. LITTLE OWL: I think this gentleman
23 just answered it, right here.

24 MS. THEODORA BIRDBEAR: We don't know
25 who he is.

1 MR. WINTER: I'm Norm Winter with Targa
2 Resources. I don't believe that eminent domain is
3 even contemplated in the regulations.

4 MS. APPEL: Yeah, no, no.

5 MS. TURNER: No. The regulations are
6 not about eminent domain, yeah.

7 MS. APPEL: Right, right.

8 MS. THEODORA BIRDBEAR: He's from the
9 industry. What is the role of eminent domain
10 on --

11 MS. LITTLE OWL: Which industry is he
12 from?

13 MS. THEODORA BIRDBEAR: -- allottee
14 lands?

15 MS. APPEL: So I -- you're asking a
16 factual question, I think, that I don't -- these
17 regulations don't address eminent domain. They
18 don't contemplate --

19 MS. THEODORA BIRDBEAR: Yes, they don't.
20 But what is the role, currently, on allottee
21 lands?

22 MS. APPEL: Kayla just pointed out,
23 there's a statute regarding eminent domain.

24 MS. TURNER: Yeah, she's citing to the
25 right-of-way -- the authority for the right-of-way

1 statute.

2 AUDIENCE MEMBER: Could you read that,
3 please?

4 MS. APPEL: The --

5 AUDIENCE MEMBER: Eminent domain.

6 MS. APPEL: Oh, that. So, she -- I was
7 mistaken. She was pointing out the statutory
8 authority for rights-of-way.

9 MS. DANKS: For right-of-way consent.

10 MS. APPEL: Not for eminent domain.

11 MS. DANKS: Consent.

12 MS. APPEL: Right. So I -- the
13 regulations require landowner consent for
14 rights-of-way. They require that compensation be
15 paid to the landowners.

16 There's no -- there are certain limited
17 situations where they can be waived or BIA can
18 consent on behalf of the landowners.

19 And if you think that those are so broad
20 that they, essentially, amount to eminent
21 domain --

22 AUDIENCE MEMBER: Yes.

23 MS. APPEL: Then, yeah, let us know
24 where that should be limited. Because, as the
25 gentleman earlier said, you know, we want to

1 protect the federal government, as well, from
2 lawsuits. So, if it is a Fifth Amendment taking,
3 you know --

4 MS. THEODORA BIRDBEAR: You have not
5 answered my question, but I know you referenced
6 leasing regulations which the BIA finalized in
7 December 2012.

8 MS. APPEL: Yes.

9 MS. THEODORA BIRDBEAR: And you
10 referenced other documents. So I'm just asking
11 about other documents regarding eminent domain on
12 allottee lands in regards to rights-of-way --
13 pipeline rights-of-way.

14 MS. APPEL: What -- I -- I'm -- I guess
15 I'm not understanding your question.

16 MS. THEODORA BIRDBEAR: Well, I'm just
17 asking: What does eminent domain -- what laws of
18 eminent domain apply to allottee lands in regards
19 pipeline rights-of-way, or any other types of
20 rights-of-way, across allottee lands?

21 MS. APPEL: I would think the standard
22 eminent -- the Fifth Amendment taking laws apply.
23 Do you want to explain more?

24 MS. TURNER: Yeah. I mean, to the
25 extent -- you know, to the extent that there is

1 concern that these take an interest without
2 compensation, then, yes, it would be your
3 standard, constitutional claims.

4 And there can be litigation like there
5 was in, you know, Hodel v. Irving, on the Indian
6 Land Consolidation Act.

7 But it certainly -- the statute --
8 Congress's right-of-way authority says that
9 rights-of-way can be granted in certain
10 circumstances with the consent and with the
11 payment of just compensation.

12 And these regulations are, you know,
13 implementing that authority. And so, we don't --
14 I guess, if you view it differently, that this is
15 a taking, then that would be a question for the --
16 for Federal Court.

17 MS. THEODORA BIRDBEAR: The reason --
18 one of the many reasons I asked is because I have
19 been threatened with condemnation because I have
20 refused to sign the leases, and I've been
21 threatened with it by the industry.

22 I filed a letter of comment to the local
23 BIA superintendent at the time. And so, you know,
24 that's part of the reason I raised the question.
25 But I believe you have not answered it. Thank

1 you.

2 MS. LITTLE OWL: Does anybody have an
3 answer for her?

4 AUDIENCE MEMBER: Just give us the
5 definition of eminent domain.

6 MS. APPEL: Are you saying that we
7 should add a definition for eminent domain in
8 the --

9 AUDIENCE MEMBER: You did.

10 MS. THEODORA BIRDBEAR: No, I'm not
11 asking for that. I'm just asking: What is the
12 current role of eminent domain on allottee lands?

13 You reference other materials that we're
14 supposed to identify that we're supposed to look
15 at in regards to this, so what is the eminent
16 domain laws on allottee lands, if they're
17 anywhere? If not, just say so.

18 MS. APPEL: In the U.S. Constitution,
19 the Fifth Amendment sets out that the -- that
20 private property may not be taken for public use
21 without just compensation.

22 And I presume there are many, many cases
23 that -- and much case law interpreting that, that
24 I don't know off the top of my head. Do you want
25 to --

1 MR. BIRDBEAR: Well, what would happen
2 if you didn't get our consent? That might be
3 another way of asking the question.

4 What would happen? Would you, yourself,
5 condemn it? Or would Industry have to file an
6 application?

7 MS. TURNER: Yeah, so it sounds like
8 there's a couple things. So, you know, BIA's
9 authority to grant rights-of-way without consent
10 is limited by statute.

11 So BIA is going to be following the
12 statutes and the rights in deciding whether to
13 grant rights-of-way.

14 But the separate issue, I think, that
15 I'm now hearing is that, you know, if Industry
16 might become frustrated that they can't get
17 sufficient consents to build their oil pipeline.

18 And so there is a question, then, of
19 whether, you know, BIA will somehow get involved
20 in that situation on behalf of Industry, or
21 whether, you know, Industry will go to court to
22 try to condemn those lands so it can build the
23 pipeline.

24 And so, I guess, that's separate and
25 apart, you know. BIA has to act within its

1 statutory responsibilities. And so what Industry
2 may or may not do is a separate question. It's
3 not answered in these regulations that we're
4 looking at today.

5 MR. BIRDBEAR: Well, do the regulations
6 address non-consent at all? If you're not going
7 to get my consent, what are you going to do then?

8 MS. TURNER: Yeah. If there are -- the
9 general rule is majority consent. There are
10 certain circumstances that are spelled out in the
11 statute that BIA can consent on behalf of
12 landowners or can grant the right-of-way without
13 consent. Those are extremely limited.

14 So if those situations aren't
15 implicated, then BIA will not grant the
16 right-of-way without necessary consents.

17 And so the next step would be -- and
18 there's actually -- there's language in the regs
19 saying, "When will BIA disapprove a right-of-way?"
20 And I think the first thing under there is no
21 consents.

22 So hopefully -- this has taken a while
23 to answer your question -- but hopefully, that --

24 DR. DAVIS: My name is Carol Davis from
25 Turtle Mountain, again. There's been some

1 discussion about valuation. And I -- it brings to
2 mind that our tribal chairman did request a
3 meeting on our reservation, as the other tribes
4 did here.

5 And I would suggest -- or, I would
6 recommend -- not suggest; I would recommend and
7 request, on behalf of our tribe, that whoever is
8 handling our land in Montana be present at that
9 meeting.

10 We have an office set up, I believe, at
11 Fort Peck. I'm a landowner in Montana, by the
12 way, and I don't even know where that office is.

13 But I know my mother went there when she
14 was about 80 years old. She wanted to visit with
15 this person about her land because she owned a
16 portion of land there and was getting, I believe,
17 \$40 a year rent.

18 And when she got there, they directed
19 her -- someone from -- this woman wouldn't meet
20 with her -- it was a woman, I guess, who wouldn't
21 meet with her -- but someone at the agency, she
22 had the description; told her where the land was.

23 And so my sister took her to where this
24 land was, and the farmer that was farming it had a
25 big mansion on this land, and she was being

1 compensated, like, \$40 a year.

2 So there's issues with the Montana
3 lands. I give that as one example. Another
4 example: I have another brother-in-law who owns
5 160 acres of land in the Medicine Lake area, where
6 all the oil is supposed to be.

7 And he went to the Bureau with a request
8 from Industry to lease his land, and they were
9 offering him \$6 an acre.

10 And the Bureau of Indian Affairs who
11 represented him at Turtle Mountain that he went to
12 see asked him, "How much are you getting for the
13 land now?"

14 And he said, "Nothing." He said, "I'm
15 not leasing it right now."

16 And he said, "Well, sign it. You'll get
17 something."

18 Six dollars an acre. And there's oil
19 everywhere there. I'm not sure if he signed it,
20 but that was -- he was telling us what response he
21 got from the Bureau.

22 And he was asking us for suggestions on
23 where he might get information on what -- how much
24 is this land -- what's the value of this land
25 there, if it's sitting in the middle of an oil

1 patch.

2 And so we were suggesting he visit
3 people from Fort Berthold because we knew that
4 there was oil development going on there. And
5 this was about six, seven years ago.

6 So we do have a representative in
7 Montana that we've never seen. So we would
8 recommend that, whoever that is, that they be at
9 that meeting on Turtle Mountain to meet with the
10 landowners, people who own land in Montana.

11 And I'm not sure if you're aware of
12 Turtle Mountain's situation: When our reservation
13 was established, we were 32 townships. They
14 reduced us to two townships by the time they got
15 done with giving all the land away.

16 And because there wasn't enough land for
17 the rest of the tribal members, they gave us land
18 in the Williston-Trenton area, and on into
19 Montana, all the way to Rocky Boy's Reservation.

20 So we've got all kinds of land in
21 Montana, and all kinds of landowners on the Turtle
22 Mountain Reservation who have never seen their
23 land. Thank you.

24 (Audience applauds.)

25 MR. TEX HALL: Good morning. I'm Tex

1 Hall, the tribal chairman for the Mandan, Hidatsa,
2 and Arikara tribal nation.

3 I just want to, first of all,
4 acknowledge all of the staff at our Fort Berthold
5 agency and our regional office in Great Plains for
6 doing a lot of the right-of-way and a lot of the
7 leasing.

8 We are now the number one oil- and
9 gas-producing tribe in the country. Probably
10 about 80 to 90 percent of all our gas is produced
11 at Fort Berthold, and it doesn't happen just by
12 itself.

13 There's a lot of work that goes into it,
14 so I wanted to acknowledge all of the staff that
15 help do that.

16 From our tribal regulatory -- we've
17 created regulatory departments: Oil and gas,
18 environmental, truck safety, we have a hazardous
19 spill code, and numerous entities that are
20 cross-deputized to provide compliance.

21 And then finally, we've created a new
22 right-of-way form. And we also have a trespass
23 form that has just did its second reading -- we
24 require three readings of any new codes -- so our
25 August meeting will be the third and final reading

1 before approval of our trespass.

2 And that is very important because in
3 our right-of-way, there are no permanent easements
4 anymore. The permanent easements have been
5 abolished and their terms and conditions.

6 And if the company complies, then they
7 keep the right-of-way, but are maxed at 20 years
8 and do not exceed 20 years.

9 If they do not meet or maintain that
10 right-of-way adequately, then that right-of-way
11 can be taken away by the tribe.

12 And there's also a different
13 compensation for pipelines, and there's also --
14 it's a one-time for the pipeline approval, and
15 then there's an annual rental.

16 And that annual rental provides for
17 compliance because the tribe believes it knows
18 best how to comply and enforce our regulations.

19 Overall, though, just in brief, the
20 proposed right-of-way rule should very clearly
21 state that State law authority -- there is no
22 State law authority over Indian lands.

23 Rights-of-way and Indian commerce laws
24 on Indian lands is pre-empted by federal law,
25 federal policy, tribal law, and Indian

1 self-determination.

2 Secondly, the Secretary should make a
3 clear finding that State taxation of improvements
4 on Indian lands interfere with reservation
5 development, undercuts Indian economic
6 development, and inhibits the generation of Indian
7 Country value.

8 Thirdly, the proposed rule should say
9 more clearly that Indian tribes possess
10 jurisdiction to conserve, protect, and regulate
11 activities on Indian lands, including the
12 authority to tax to defray the costs on providing
13 tribal governments to enforce and comply, should
14 this be required for companies.

15 The proposed rule should recognize that
16 tribal law may supersede the regulation to provide
17 for greater protection of tribal lands, provided
18 tribal law is consistent with federal statute.

19 For cases of trespass and holding over,
20 the proposed rule should acknowledge that tribal
21 governments may act pursuant to tribal law and
22 enforce tribal trespass laws and codes and collect
23 damages.

24 And that the Secretary will assist
25 tribal governments to enforce tribal law. This is

1 big in our proposed trespass code. I believe it's
2 a \$25,000-a-day fine. I'm not certain what the
3 BIA's -- I think it's, maybe, \$2500.

4 Also on bonds, it should be required for
5 the value of the right-of-way for that particular
6 project, not \$75,000.

7 And our proposed right-of-way
8 requires -- will require bonds to the value of the
9 project, so there is no dollar value on it.

10 Unless otherwise negotiated by Indian
11 tribes, the terms of rights-of-way should not be
12 more than 20 years. And that's in our new
13 right-of-way policy. Rights-of-way grants under
14 the proposed rule should be permits rather than
15 permanent easements.

16 And the Secretary should reserve the
17 right to amend a regulation consistent with Indian
18 self-determination and federal statutes.

19 And finally, I also support the
20 extension of consultation. I think it's very
21 critical. These proposed regulations apply to all
22 landowners. We have thousands of individual
23 landowners, and I'm the only tribal chairman here.

24 And there are -- I do belong to the
25 Great Plains Tribal Chairmen's Association which,

1 I am the chairman of that and, obviously, I will,
2 you know, provide information and a report to the
3 other tribes.

4 But clearly, there needs to be an
5 extension of time, for August 18th is not enough
6 time. Thank you very much.

7 MS. APPEL: Thank you.

8 (Audience applauds.)

9 MS. ROME LIGHT: My name is Tana Rome
10 Light. I have a problem with BIA. I had a home
11 site four years ago.

12 I signed all the documents, and
13 everything was okayed. So I went back up to the
14 BIA, and none of those documents were found.

15 So I'm starting a new one, but I don't
16 know what happened to my paperwork. So I wonder
17 if it's at the BIA office?

18 MS. DANKS: I'll sit down and meet with
19 you specifically on that. I'll sit down with you
20 after this meeting.

21 MS. ROME LIGHT: Okay. You found them?
22 The old ones?

23 (Audience laughs.)

24 MS. DANKS: You're talking about a home
25 site.

1 MS. ROME LIGHT: Well, I thought I'd
2 bring it up since BIA's here.

3 MS. DANKS: Yeah. We will meet
4 specifically with you on that, because I think you
5 already came to the BIA office.

6 MS. ROME LIGHT: I figured maybe, hey,
7 if they could take care of my home site --

8 AUDIENCE MEMBER: There you go.

9 MS. DANKS: We have to get consent.

10 AUDIENCE MEMBER: Do what you have to
11 do.

12 MR. BIRDBEAR: Again, I wanted to remind
13 you, the law says: Land alienated from tribes is
14 not subject to tribal jurisdiction.

15 That is the law. Just because the
16 Bureau hasn't been enforcing it doesn't mean it's
17 right. It doesn't mean the tribes can have this
18 jurisdiction over allotted lands.

19 I think this latest scandal at Fort
20 Berthold of a million gallons of production water
21 contamination proves tribes are incapable of
22 administering any jurisdiction, let alone
23 something that involves our own personal lives.

24 I'm saying this to you, our trustee.
25 You got to watch out for us. And now, if this

1 happens, of all things, this right-of-way should
2 never, ever concern tribal jurisdiction.

3 That's what A-1 Contractor was all
4 about. There was a car accident on Highway 8.
5 And because the Bureau gave that land to the State
6 through a right-of-way, that alienated that. So
7 tribal jurisdiction could never apply.

8 Now in this case, if you're
9 contemplating of giving tribes jurisdiction in the
10 name of this fake reason of self-determination,
11 then you are playing with Fifth Amendment claims.

12 Already, we have Indian landowners who
13 can't develop their own water on their own land.
14 And the Bureau isn't looking at what the law is.
15 Those are Fifth Amendment claims right now. There
16 are claims right now.

17 Just because nobody knows enough or has
18 money to hire a lawyer to sue them doesn't mean
19 it's not there. They're there.

20 And this will be a Fifth Amendment
21 taking when you let the tribes administer any
22 scintilla of administration over our right-of-ways
23 on our lands.

24 So I just wanted to give that reminder
25 to you. It might take us a while, but we'll get

1 answers. And you owe them to us.

2 The Supreme Court decision already said
3 that you got to tell us the facts. You don't have
4 to tell us the claim, but you got to tell us the
5 facts.

6 What does Fifth Amendment mean? What
7 does non-consent mean? We can't even develop our
8 own land on our own property without interference
9 by the tribe.

10 Earlier this spring, the Bureau said to
11 this one landowner, "You don't need a tribal
12 permit to develop water on your land." Now, five
13 months later, they say, "Well, we don't know.
14 Maybe you do."

15 That is a Fifth Amendment claim, and
16 that's coming, because that denied that Indian
17 landowner that revenue without his consent.

18 And all of these 200 spills that occur
19 on Fort Berthold, where is the Bureau watching out
20 for us?

21 Because they gave that right-of-way for
22 those oil pads and those pipelines. They have to
23 sue for that land that's lost forever.

24 You think contamination is nothing
25 because you're off in D.C. or in your office, but

1 to those of us who are here, there's radioactive
2 activity going on. It's going to be a desert
3 here. And this is where we live.

4 So there's going to be a lot of
5 liability established if you allow tribes -- it'll
6 just compound in claims, is all. And I just
7 wanted to everybody to be reminded of that,
8 because it seems like you're going too far in
9 recognizing tribes.

10 That million-gallon scandal just proved
11 they don't know what they're doing, and they don't
12 know why.

13 And the basis of that ignorance is
14 legal, because those allotted and homesteaded and
15 right-of-ways: Those are alienated from the
16 tribe.

17 And I'll say this: You know this. At
18 least you know today, August 5th, 2014.

19 (Audience applauds.)

20 MS. APPEL: Thank you. We have about
21 20, 15 minutes left. So if there's anyone who
22 hasn't made a comment yet that would like to
23 speak, please take the opportunity now.

24 MS. GUTIERREZ: My name is Sara
25 Gutierrez: Three Affiliated. I was reading your

1 flyer that you conveniently handed out for us, and
2 it says that you're the representatives from the
3 BIA, right? And it's for 56 million acres, and
4 they only send you two?

5 And also, you guys seem like you have
6 taken a lot of time and educated yourselves in all
7 of this, and we haven't. We've only found out
8 today.

9 I only found out about it yesterday.
10 And you're only making two trips: Here, to North
11 Dakota, and to Arizona? You haven't given a lot
12 of landowners a lot of time.

13 And you're -- and you have
14 56 million acres that you're saying that you hold,
15 and there's only two of you here.

16 And you're supposed to be looking out
17 for our best interest? Why weren't we given
18 sufficient time for this?

19 MS. APPEL: So I'm taking that as a
20 request for extension of the comment deadline.

21 MS. LINSETH: Hello. Can you hear me?
22 Okay. I'm Clarine Linseth; I'm from Fort
23 Berthold. And I'm talking to you people of the
24 Bureau. When I look at you guys, I see the United
25 States, right?

1 And when I look at all the people here,
2 I see Native Americans, First Nations. You guys
3 are supposed to be our people that are supposed to
4 watch over us. Why is that? We can't look out
5 for ourselves?

6 Is that what you're saying? Because we
7 took in Lewis and Clark a long time ago. Why? So
8 he could come up here and document everything.

9 You think he's seen oil coming up out of
10 the ground when he was going over to Washington?
11 I think so.

12 I think you guys knew this was coming
13 even before we did, back in 2006 or 2005, when
14 Halliburton probably came and talked to whoever,
15 the lobbyists, and started talking to this
16 industry.

17 And then you guys -- they told you guys,
18 your bosses, "Umm, I think we need to fix the
19 right-of-way. We need to start putting in the
20 language. We need to fix this a little bit."

21 You guys knew this was coming. And we
22 got steamrolled. We always get steamrolled.
23 Because back in 2010, 2011, 2005, leases were
24 going for \$6 an acre.

25 No, that's not right. That's really not

1 right. You're taking advantage of us again.
2 You're letting these guys, all these Industry
3 people, take advantage of us again. You're not
4 doing your responsibility to watch out for me or
5 her or him.

6 If I was a mad black woman, you would be
7 really paying attention to what I'm saying. Or if
8 these guys were all mad black people, you'd be
9 looking at us differently.

10 You'd be saying, "Oh, yeah. Power."
11 But when we say something, we're uprising. Why is
12 that? We're not uprising; we're trying to be free
13 like we were before. We don't like being taken.
14 We know when we are.

15 You know, I've lived on -- I grew up on
16 that rez. But I lived off the rez, and so I know.
17 And when I came back and I seen that, and I'm
18 like, "You guys, you need to hold on. We need to
19 get a little bit more."

20 This was back in 2005. I said, "You
21 guys don't -- you know, spread the word.
22 Everybody. Spread your word. Spread the word.
23 That's not right."

24 And so I'm a whistleblower. I am. And
25 I'm probably blacklisted at Fort Berthold for

1 doing that, but I'm going to -- and even when I'm
2 saying this -- like the guy from the Cheyenne
3 Reservation, you know -- or whatever he was,
4 here --

5 MS. LITTLE OWL: Yeah.

6 MS. LINSETH: You know, I speak on
7 behalf of the Turtle Mountains, too, because I'm
8 quarter Turtle Mountain.

9 And where are you guys heading to? You
10 guys are going to pave the way right here. You
11 guys are putting in your foot right here at Fort
12 Berthold, because you guys want to pave the way up
13 there. I know that. I know that's where you're
14 heading. The whole industry.

15 I work for the -- I used to work for the
16 industry, you know. But I don't anymore, because
17 it's too bad over there. You should see it.
18 There's a million-gallon saltwater spill.

19 When Mr. Birdbear said, "I don't even
20 know if that lady knows." She might; she might
21 not. She might be in California.

22 Did you guys tell her? Did you guys
23 contact -- did you guys find out who owns that
24 piece of property?

25 Another thing: I'm a pipeliner. Who

1 checks this stuff? Right? Who does the x-rays?
2 Who makes sure that when that fluid, that heavy
3 fluid, goes through that pipeline and goes up a
4 hill, it's not going to break?

5 That it's going to be sealed enough that
6 it's going to hold up to that pressure, that head
7 pressure on that pipeline. Well, it's just a
8 plastic weld. Who's checking that?

9 You guys are supposed to. You guys are
10 supposed to get on that BOR and say, "Bureau of
11 Reclamation, how come you guys are not checking on
12 my people?" That's what you're supposed to say.
13 Those are my people.

14 But you're not. You're the United
15 States Government. You did break treaties with
16 you. And we trusted you.

17 You need to take care of us. You need
18 to go back and tell your senators and our
19 senators, here: We vote for them, you know?

20 So -- and who is going to clean that up?
21 Is it still sitting there? I bet you anything, if
22 I went up there today, I could take pictures of a
23 big, long, dead streak.

24 And nobody's going to care. Nobody's
25 going to care because it's still there. I can

1 guarantee that. You're supposed to care.

2 And those pipelines that sit under the
3 ground for years and years and years, as
4 Councilman Hall was saying, those are going to be
5 there forever. They are.

6 Because I've run pipeline through Tioga,
7 and they get old. And they corrode. And that
8 stuff is highly corrosive. Right?

9 So not only when we talk
10 right-of-ways -- when we talk right-of-ways, that
11 stuff is in there forever. I'm with -- we should
12 write land-use laws.

13 That's what you guys should talk about.
14 Because I know the guys in Watford City do that.
15 They get whatever -- whatever goes through their
16 land underneath, they get a percentage of all that
17 oil that goes underneath.

18 Now, the tribe wants part of that?
19 Great. They can do it, they can subdivide it;
20 whatever.

21 But when it goes through a landowner,
22 that should be that individual allottee, the heir
23 of that original allottee, our ancestor. It
24 should go -- we should get paid for that. But
25 we're not.

1 And we're not even getting anything for
2 the gas that's being -- that's what I say. It's
3 toxic over there. But you don't know that. And
4 everybody's trying to explain that to you in a
5 real nice way.

6 But I'm not like that. I'm like the mad
7 black woman. And I'm like all the other
8 individuals who get mad at town hall meetings when
9 government and city hall doesn't listen to them.
10 I'm that person.

11 So I'm not going to talk real nice or
12 nothing like that, because you're going to think
13 I'm weak. You're going to write me off. You're
14 going to think, "Okay, let's go back to D.C.," or
15 wherever you come from.

16 And yeah, they put you in a tough place.
17 They put you on the hot seat. Because now you're
18 talking to us people.

19 And you're here to hear what we have to
20 say. And I know you're taking all back there.
21 And you can take it all back to there, and they
22 can hear this.

23 Because we need to talk. We need to say
24 what we want to say, without being -- saying that
25 we're being uprisers. We need to be able to

1 protest safely because it's our right, because we
2 were made citizens, right?

3 We're still Native American, but we're
4 still citizens, and so we have that right. We
5 don't have a Martin Luther King yet, but hopefully
6 we will.

7 MS. APPEL: Thank you. Those are some
8 excellent comments. And I think that the proposed
9 rule may help address -- so I encourage you to
10 look through it and let us know --

11 MS. LINSETH: Yeah, I just got done
12 looking through it.

13 MS. APPEL: Yeah.

14 MS. LINSETH: And see, that's another
15 thing: Notification. You know, we've talked
16 about that earlier. We need to come back to that.
17 You guys have my number, you all have my number,
18 and you have my address. Because we're numbered.
19 We're just like the Jews.

20 We're numbered. And you got our
21 addresses, and you know exactly where we are all
22 the time. So there's no sense in you guys owning
23 the United States Post Office.

24 You all work for the United States, so
25 you guys can throw that flyer in the mail, no

1 problem. Right? We're still segregated. All
2 right. Thank you.

3 MS. APPEL: Thank you.

4 (Audience applauds.)

5 MS. APPEL: Some of the points you made,
6 I think -- like, of the pipelines being there
7 forever: We do have some proposed term limits on
8 rights-of-way.

9 And you're also talking about making
10 sure that, you know, as the infrastructure decays,
11 that someone is watching out to make sure that
12 it's -- it doesn't cause an environmental issue.

13 And you were also talking about getting
14 the throughput fees: Getting compensated not just
15 for the land as a pipeline, but for getting, you
16 know, some percentage of what the oil, or
17 whatever, that's traveling through there.

18 And I think we did -- we did think about
19 that in drafting the rule, that we'll have to look
20 at that again and make sure that it's clear.

21 MS. LITTLE OWL: They do that a lot,
22 though, with that fracking. We were just in New
23 Town a couple weeks ago, and we talked with a
24 fellow up there who told us that when they frack
25 or come down, it doesn't always go straight down;

1 it goes to the right or the left --

2 MS. APPEL: Like, horizontal drilling?
3 Right.

4 MS. LITTLE OWL: -- a couple miles. So
5 it's going through someone's land. And that's
6 exactly -- I mean, we sat and we looked at the
7 documents.

8 And we've looked at -- we've got maps
9 upon maps of our own land and looked at it and
10 spoke with specialists who have told us, "Okay.
11 Well, we've got so-and-so's land over here, but
12 they did fracking."

13 We didn't even know what the heck that
14 was, but they did fracking over here, and so --
15 and it went a couple miles across your guys' land.

16 And so what do you get for that? A big
17 hole in your land? Well, that's about all you're
18 getting.

19 Well, this lady that got up here, she
20 made a lot of very good comments. I appreciate
21 her getting up there, and I appreciate her being
22 the mad black woman up there.

23 But it's like, you know -- I'm serious.
24 When you get an Indian to stand up and start
25 talking, the first thing you get -- no pun

1 intended, but the first thing a white person does
2 is, they want to shut their ears because we're not
3 known to do that.

4 But the Indian people are known to be
5 quiet and keep their mouth shut. The women are
6 supposed to be passive and hold their head down.
7 Well, not anymore.

8 MS. JULETTA BIRDBEAR: I wanted to ask a
9 question. And it had to do with valuation, but
10 this is a different aspect of valuation of your
11 land.

12 In the event that a pipeline is placed
13 upon your land, and the consent is granted through
14 majority interests, can you explain to me the
15 impact that that pipeline that carries, say,
16 production fluid -- can you tell me the valuation
17 impact upon land when that so-called "improvement"
18 is placed in your land?

19 MS. DANKS: Again, we're not appraisers
20 here, but when we order an appraisal, the
21 appraisal will give the value of the land, and
22 then the value of the land after the improvement.

23 MS. JULETTA BIRDBEAR: Can you clarify?
24 Is that --

25 MS. DANKS: I'm not --

1 MS. JULETTA BIRDBEAR: I'm not asking
2 for figures; I'm asking for a general
3 understanding of that concept.

4 When a pipeline is placed in the land
5 which carries, let's say, hydraulic fracking fluid
6 or production fluid, and we don't know the
7 contents of the chemicals because, legally, that
8 is protected under that Trade Secrecy Act, but the
9 potential is there for that pipeline to leak,
10 because pipelines do degrade.

11 Can you tell me: What is the valuation,
12 up or down, when a pipeline is placed within the
13 land?

14 MS. DANKS: Well, the value does -- of
15 the land goes down, and the value -- because they
16 take away the portion of the land.

17 And I'm not an appraiser, so just
18 generally, what I've seen on appraisals is, the
19 portion that's separated out, that is taken away
20 from the whole.

21 MS. JULETTA BIRDBEAR: So, as I
22 understand it, what you have told me is that, if I
23 sign a right-of-way for a pipeline -- someone
24 comes to me and says, "We want to put a pipeline
25 on your land."

1 I should know that, when I sign that
2 document, the valuation of my land decreased from
3 that transaction?

4 MS. DANKS: You should be compensated
5 for the portion of the land that is within the
6 right-of-way.

7 MS. JULETTA BIRDBEAR: That's -- that's
8 the actual physical soil that has been lifted up
9 and taken away; is that what the valuation is
10 based on?

11 MS. DANKS: Generally, it can be in
12 between -- it depends on the pipe, I guess. But
13 it can be various sizes.

14 MS. JULETTA BIRDBEAR: Sure, sure. It
15 depends on what the pipe carries and what --

16 MS. DANKS: Yeah.

17 MS. JULETTA BIRDBEAR: -- the width of
18 the pipeline is, the length of it across the land.

19 MS. DANKS: Yeah.

20 MS. JULETTA BIRDBEAR: Okay. The other
21 thing is, I wanted to --

22 MS. DANKS: I'd like to get appraisers
23 out to, maybe, address your questions, because I
24 think that would be better.

25 MS. JULETTA BIRDBEAR: Mm-hmm.

1 MS. DANKS: I mean, you can get a more
2 specific answer. I don't want to frustrate you.

3 MS. JULETTA BIRDBEAR: Well, you're not
4 frustrating me. I think you're frustrated because
5 you don't know how to answer the question.

6 MS. DANKS: Well --

7 MS. JULETTA BIRDBEAR: But what I'm
8 trying to do is just try to come away with more
9 information than what I came here with.

10 That's what I'm trying to do. And I
11 know that we'll probably meet again in New Town,
12 which is a good thing.

13 MS. DANKS: Yeah, yeah. So --

14 MS. JULETTA BIRDBEAR: So that will give
15 you some time to, maybe, find --

16 MS. DANKS: I guess what I'm trying
17 suggesting is, maybe, if I can get an appraiser
18 out, also.

19 MS. JULETTA BIRDBEAR: Yeah. Sure.
20 That would be good. Very good.

21 And I'd like to also add on to and just
22 re-emphasize what Roger Birdbear spoke to you, and
23 that is to allow the landowner to craft this draft
24 in its revision form.

25 We're the landowners. And, especially

1 on Fort Berthold, we're the majority; we're
2 landowners.

3 And that relationship between the
4 federal government, the Bureau of Indian Affairs,
5 and me, is -- I'm a landowner -- is still there.

6 I haven't relinquished it to a tribe,
7 and Congress hasn't, either. That relationship is
8 still there. Thank you.

9 MS. DANKS: Thank you. These are all
10 good comments.

11 (Audience applauds.)

12 MS. APPEL: We're just about at the noon
13 hour, so I think we're going to wrap it up, unless
14 we have anyone who hasn't spoken yet who's dying
15 to make a comment.

16 MS. PACKUHEA: Can you make that list
17 available that Juletta asked for to begin with
18 about who drafted this?

19 MS. APPEL: Yes, absolutely.

20 MS. PACKUHEA: Thank you.

21 AUDIENCE MEMBER: And when will the
22 transcripts be ready?

23 MS. APPEL: Usually, it takes the court
24 reporters a couple weeks to get them pulled
25 together, and so we'll get them posted, and --

1 MS. LITTLE OWL: Are they going to be
2 mailed out?

3 MS. APPEL: They will be posted on the
4 website. Thank you, everyone, for coming.

5 AUDIENCE MEMBER: Thank you.

6 (The hearing concluded at 11:59 a.m.)

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1 NOTARY REPORTER'S CERTIFICATE

2 I, Elizabeth H. Lundquist, a Notary Public
3 and Court Reporter, do hereby certify that I
4 recorded in shorthand the foregoing proceedings
5 had and made of record at the time and place
6 herinbefore indiacted.

7 I do hereby further certify that the
8 foregoing one hundred fifty-six (156) pages
9 contain an accurate transcription of my shorthand
10 notes then and there taken in Bismarck, North
11 Dakota, on August 5, 2014.

12 I further certify that I am neither related
13 to any of the parties or counsel, nor interested
14 in this matter directly or indirectly.

15 WITNESS my hand and seal this day of August
16 25, 2014.

17
18
19
20 _____
21 Elizabeth H. Lundquist
22 Notary Public
23 Anoka, Minnesota

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